

Congress of the United States
Washington, DC 20515

January 9, 2015

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Dear Administrator McCarthy,

We write today in support of a recent grant application from Greene County, Pennsylvania that will enable the county to initiate a complete assessment of the county's brownfield sites as part of its economic development strategy.


Home to more than 35,000 residents, Greene County is the coal mining heart of Pennsylvania. Located in the state's southwest corner, Greene County is working hard to overcome several challenges posed by years of mining and previous industrial activities that left behind a significant environmental impact on the region. County officials are also grappling with rural poverty and a tax base that is largely dependent on declining coal revenue.

As a result of changes in energy demand and consumption patterns, the County is actively seeking to diversify its economy moving forward and supporting other industries, like farming, tourism, and education. For its economic development strategy, the County is requesting \$400,000 under the EPA Brownfields Community Wide Assessment Grant to support environmental assessments at numerous potentially hazardous sites. The County plans to leverage these assessments to reuse and redevelop these hazardous sites so they act as a catalyst for new job-creating projects.

Our shared Greene County constituents come from a long legacy of men and women, many of them being coal miners, who built and powered this nation through determination and a strong work ethic. The federal government can help to ensure these individuals are given the tools and resources they need to overcome the barriers of the past and face the challenges of the future head-on.

As you receive many meritorious requests, we encourage you to give Greene County's grant application your full and fair consideration. We ask that you keep us apprised of your review and stand ready to assist. Should you have any questions please contact Brad Grantz (Rep. Murphy) at 202.225.2301 or Sean Joyce (Rep. Shuster) at 202.225.2431.

Sincerely,



Tim Murphy
Member of Congress



Bill Shuster
Member of Congress

Congress of the United States
Washington, DC 20515

January 20, 2015

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Ave., NW (1101A)
Washington, D.C. 20460

Dear Administrator McCarthy:

We cordially invite you to testify at a joint hearing before the House Committee on Transportation and Infrastructure and the Senate Committee on Environment and Public Works titled "Impacts of the Proposed Waters of the United States Rule on State and Local Governments." The hearing will take place on Wednesday, February 4, 2015 at 10:00 a.m. in Room HVC-210 of the Capitol Visitor Center.

Please hand-deliver 200 double-sided copies of your testimony to Mike Legg in Room 2165 of the Rayburn House Office Building by 5:00 p.m. on Friday, January 30, 2015. Please send an electronic version of your testimony to both Tracy Zea at tracy.zea@mail.house.gov and John Glennon at john_glennon@epw.senate.gov. Also, please be advised that oral statements to the committees will be limited to five minutes.

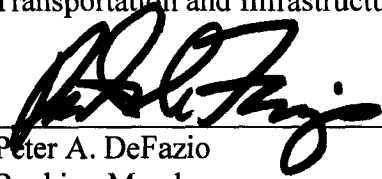
In compliance with the Americans with Disabilities Act, if you need any reasonable accommodations for a disability to facilitate your appearance, please contact John Glennon, at least two business days before the hearing.

If you or your staff have any questions or need further information, please contact Geoff Bowman at geoff.bowman@mail.house.gov of the House Committee on Transportation and Infrastructure at (202) 225-4360 or Laura Atcheson at laura_atcheson@epw.senate.gov of the Senate Committee on Environment and Public Works at (202) 224-7844.

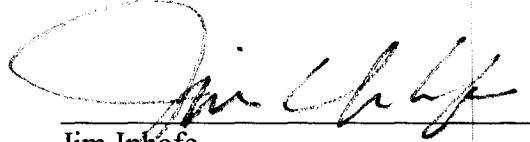
Sincerely,



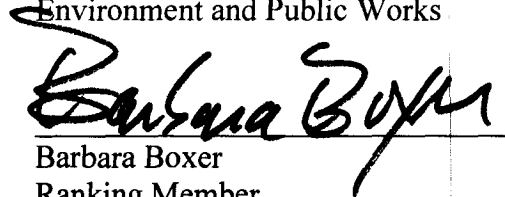
Bill Shuster
Chairman
House Committee on
Transportation and Infrastructure



Peter A. DeFazio
Ranking Member
House Committee on
Transportation and Infrastructure



Jim Inhofe
U.S. Senator
Senate Committee on
Environment and Public Works



Barbara Boxer
Ranking Member
Senate Committee on
Environment and Public Works

BILL SHUSTER

9TH DISTRICT, PENNSYLVANIA

**COMMITTEE ON TRANSPORTATION
AND INFRASTRUCTURE**
CHAIRMAN

COMMITTEE ON ARMED SERVICES

SUBCOMMITTEE:
INTELLIGENCE, EMERGING THREATS
& CAPABILITIES

Congress of the United States
House of Representatives
Washington, DC 20515-3809

May 6, 2015

Environmental Protection Agency
Congressional Affairs
1200 Pennsylvania Avenue, NW, Room 3426 ARN
Washington, DC 20460

Regarding: Ms. [REDACTED]

The attached communication is submitted for your consideration, and to ask that the request made therein be complied with, if possible.

Any assistance you can offer in this matter would be greatly appreciated.

If additional details are required, please do not hesitate to contact my Blair County office at (814) 696-6318.

If you will advise me of your action in this matter and return your reply to me, I will appreciate it.

Very Truly Yours,



BILL SHUSTER
MEMBER OF CONGRESS

310 Penn Street, Suite 200
Penn Street Center
Hollidaysburg, PA 16648
(814) 696-6318

WFS:mmmb
Enclosure

2209 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-3809
(202) 225-2431
FAX: (202) 225-2488

310 PENN STREET
SUITE 200
HOLLIDAYSBURG, PA 16648
(800) 854-3035
(814) 696-6318
FAX: (814) 696-6725

827 Water Street
SUITE 3
INDIANA, PA 15701
(724) 483-0516
FAX: (724) 483-0518

100 LINCOLN WAY EAST
SUITE B
CHAMBERSBURG, PA 17201
(717) 264-8305
FAX: (717) 264-0268

www.shuster.house.gov
www.facebook.com/rep.shuster
www.twitter.com/repbillshuster
www.youtube.com/repshuster

SUBJECT/PROBLEM:

See Attached

In accordance with Title 5, Section 552a of the United States Code, I hereby authorize Congressman Bill Shuster to request assistance on my behalf from the EPA
(NAME OF AGENCY)
In connection with my above-mentioned subject/problem, and authorize discussion of my records with Congressman Shuster and/or his representative for a period of one year from the date below:

NAME:

(b) (6)

ADDRESS:

(b) (6)

(b) (6)

b

)

Claysburg

6

)

16625

PHONE:

(b) (6)

SIGNATURE:

(b) (6)

DATE: 4-9-15

SOCIAL SECURITY NUMBER:

(b) (6)

DATE OF BIRTH:

(b) (6)

Please complete this form and include a brief explanation of your problem, then mail to:

Congressman Bill Shuster
310 Penn Street Suite 200
Hollidaysburg, PA 16648

Phone - 814-696-6318

Toll-Free - 1-800-854-3035

Fax - 814-696-6726

April 8, 2015

To Whom This Concerns:

We have contacted Congressman Shuster's office to see if anyone can help us with our problem concerning manure management and proper burial of cows.

As far as we know we have exhausted all our help from state agencies.

We have contacted Bedford County Conservation office. (Jennifer and Dan Over) who say they have no authority to enforce DEP laws. They only hand out manure management plans and make suggestions. Dan Over has visited both barnyards.

~~We~~ We have contacted Blair Cty conservation office. (Beth Fulick about massive fly problem). We supplied her with pictures of manure runoff.

We have contacted Representative Jesse Topper's office. We took pictures. Different agencies were contacted and DEP in Harrisburg feels the problem is over because they feel this runoff that runs down the ditch beside the road doesn't meet the creek.

We contacted Senator Wozniak's office. (same explanation and run around)

The agriculture dept. feels this is a civil matter. We should retain a lawyer. We wouldn't need a lawyer if laws were enforced that are already written.

1) DEP in Harrisburg refuses to do anything more than what they do. They sent a representative with Dan Over. on a sunny day. We wanted to give them a bottle of water from the ditch. They refused.

In our opinion, the water does reach the creek.

We built our house in 1976 before both our neighbors became hobby farmers.

In ^{Feb.} 2014 I had a perfectly good well. (262 ft. deep). We had a snow melt. I turned my spicket on and brown water came out. We treated the well by using clorox, water conditioner, ultra violet light and draining well. We had our water checked. (May 2014) we had hard rains and runoff. Our water turned pure brown. We believe it was manure. E Coli 101 Total Coliform > 200.5 unusable lethal.

We spent several thousand dollars for a new well. Our well was less than 100 ft from barnyard fence. We were told by the conservation dept since we drilled a new well nothing could be done. We moved our new well further away.

The problem being Mr. Knisely and Mr. Corle's barnyards are full of manure some on stacks. (not according to how the law reads) Mr. Knisely's cows get their water from the creek. Pasture land is mostly bare ground with a little

" He had a cow die in spring 2014 and 2015 in the barnyard. In 2015 the dead cow laid on a manure pile for probably at least 28 to 30 hrs. that we seen it. Burying cows ~~is~~ legal but he just had the cow brought across the road to my side (probably about 20-25ft. from road and ditch put in a hole and buried.

All of us have wet springs on our properties. I am concerned that bacteria from this cow will find its way into all our water supplies. These 2 farms are situated among several houses. Mr. Knisely's barnyard hasn't been cleaned for quite a while. Mr. Corle's is not good in either. All this manure and dead cow with runoff could pose another water problem for everyone. The flies are horrible. This can be a health hazard for people along with the animals.

Mr. Corle and Mr. Knisely both have barn roof water running on these unsanitary barnyards.

Mr. Corle's barnyard is right ~~against~~ ^{against} my shrubs and garage. Our properties run downhill all this runoff runs between my shrubs and down the hill and in a ditch across my blacktop driveway. In order to get my paper and mail we are always stepping over brown water or brown ice.

1) I have video and pictures. We have to drive our car through this mess to get in our driveway.

Mr. Corle makes ditches in the barnyard so the water drains off. This runs in the ditch over the driveway to the creek. His pasture in the back of my house runs downhill. When he spreads manure or puts the cows there we get that run off, too.

Between the flies and barnyard water in our opinion we feel this is a health hazard to us, our neighbors and the poor animals who live in manure filled barnyards.

DEP in Harrisburg refuses to listen or act on the run off. The comment was made by one of the office's ^{mentioned} its just ground water like any normal barnyard. It's not and we live with this mess everyday in our driveway, around our house. My water supply was ruined by someone.

We feel someone should come out and enforce cleaning these barnyards up and make sure animals are buried properly to prevent everyone in the neighborhood from any health hazards and bacteria.

When people walk the road in front of my house I see small children playing and stepping in this ditch with manure water.

We have documentation of dates when all these agencies were contacted. Some agencies were contacted numerous times. We have video and pictures.

Both barnyards need cleaned on a regular basis and preferably ^{when doing so} not put this manure beside house^s. There are fields to put it in.

(b) (6)

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(b) (6)

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Sincerely,

(b) (6)

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Congress of the United States
Washington, DC 20515

February 17, 2017

Ms. Catherine McCabe
Acting Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Mr. Kevin Minoli
Acting General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Mr. Donald Benton
White House Liaison
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Acting Administrator McCabe, Mr. Minoli, and Mr. Benton:

Under section 108(b) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Environmental Protection Agency (EPA or the Agency) on December 1, 2016, signed proposed requirements on the hardrock mining industry for demonstrating financial responsibility. The Proposed Rule, "Financial Responsibility Requirements Under CERCLA §108(b) for Classes of Facilities in the Hardrock Mining Industry," was published in the Federal Register on January 11, 2017 (82 Fed. Reg. 3388). In the Proposed Rule EPA established a 60-day comment period which ends on March 13, 2017. We write to request an extension of that deadline.

The Committees on Energy and Commerce and Transportation and Infrastructure have jurisdiction over CERCLA and the Committee on Natural Resources has jurisdiction over laws that impact the hardrock mining industry. All of the Committees have a direct interest in the Proposed Rule.

We write to request a minimum 120-day extension of the deadline to submit comments, or at least until July 10, 2017. The Proposed Rule is a significant rulemaking that will have a considerable impact on the mining industry. EPA's Regulatory Impact Analysis estimates that the financial responsibility amount for the regulated industry is \$7.1 billion. Furthermore, the

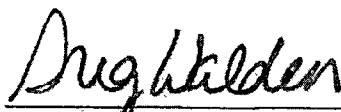
Proposed Rule is extremely technical, the rulemaking docket contains over 200,000 documents, and the proposal includes a complex statistical model that EPA developed to calculate financial assurance obligations.

Despite numerous Congressional requests during the process of preparing the Proposed Rule, EPA declined to share critical information about the development of the statistical model with Congress, the States, the regulated industry, and other stakeholders. As such, the statistical model for calculating financial assurance – which is the crux of the rule – was developed by EPA with no input from States, industry experts, or stakeholders. The rulemaking docket has quadrupled since the Proposed Rule's publication date and now contains over 2,300 technical documents to support the Proposed Rule. It is obvious that the 60-day comment period set by EPA is wholly inadequate to evaluate the proposal and the voluminous supporting information and to prepare meaningful public comments.

While we recognize the importance of financial assurance, we are especially concerned about the transparency of the process and that EPA failed to adequately seek public input during preparation of the Proposed Rule and in particular, the statistical model. We are also particularly concerned about whether EPA sufficiently considered the issue of preemption and whether the 108(b) rule is duplicative of existing federal and state programs. We understand that EPA compiled summaries of all 50 states' mine bonding requirements to get a general understanding of the types of requirements applicable under other programs and that EPA made assurances that key documents would be made available in the docket. Notably, EPA put the summaries in the docket this week – almost a month after the start of the 60-day comment period.

We understand that EPA is currently under a court order in the U.S. Court of Appeals for the District of Columbia Circuit to finalize a rule by December 1, 2017. However, the Court's order explicitly allows EPA to request an extension of deadline to finalize the rule. In August, 2016 Chairman Upton and Chairman Bishop requested that EPA slow down the rulemaking process in order to allow meaningful public participation. EPA refused and published the Proposed Rule in December, 2016 according to the Court's original deadline. We hereby reiterate the request that EPA seek leave of the Court to extend the December 1, 2017 deadline to promulgate a final rule. We also request that in the meantime, EPA extend the comment period on the Proposed Rule until at least July, 10, 2017. Thank you for your prompt response to this request.

Sincerely,



Greg Walden
Chairman
Committee on Energy and Commerce



Rob Bishop
Chairman
Committee on Natural Resources

A handwritten signature in black ink, appearing to read "Bill Shuster", is written over a horizontal line.

Bill Shuster
Chairman
Committee on Transportation and
Infrastructure

cc: The Honorable Frank Pallone, Jr., Ranking Member
Committee on Energy and Commerce

The Honorable Raúl M. Grijalva, Ranking Member
Committee on Natural Resources

The Honorable Peter A. DeFazio, Ranking Member
Committee on Transportation and Infrastructure

Attachment

RESPONDING TO COMMITTEE DOCUMENT REQUESTS

In responding to the document request, please apply the instructions and definitions set forth below:

INSTRUCTIONS

1. In complying with this request, you should produce all responsive documents that are in your possession, custody, or control or otherwise available to you, regardless of whether the documents are possessed directly by you.
2. Documents responsive to the request should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.
3. In the event that any entity, organization, or individual named in the request has been, or is currently, known by any other name, the request should be read also to include such other names under that alternative identification.
4. Each document should be produced in a form that may be copied by standard copying machines.
5. When you produce documents, you should identify the paragraph(s) and/or clause(s) in the Committee's request to which the document responds.
6. Documents produced pursuant to this request should be produced in the order in which they appear in your files and should not be rearranged. Any documents that are stapled, clipped, or otherwise fastened together should not be separated. Documents produced in response to this request should be produced together with copies of file labels, dividers, or identifying markers with which they were associated when this request was issued. Indicate the office or division and person from whose files each document was produced.
7. Each folder and box should be numbered, and a description of the contents of each folder and box, including the paragraph(s) and/or clause(s) of the request to which the documents are responsive, should be provided in an accompanying index.
8. Responsive documents must be produced regardless of whether any other person or entity possesses non-identical or identical copies of the same document.
9. The Committee requests electronic documents in addition to paper productions. If any of the requested information is available in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, back up tape, or removable computer media such as thumb drives, flash drives, memory cards, and external hard drives), you should immediately consult with Committee staff to determine the appropriate format in which to produce the information. Documents produced in electronic format should be organized, identified, and indexed electronically in a manner comparable to the organizational structure called for in (6) and (7) above.

10. If any document responsive to this request was, but no longer is, in your possession, custody, or control, or has been placed into the possession, custody, or control of any third party and cannot be provided in response to this request, you should identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control, or was placed in the possession, custody, or control of a third party.

11. If any document responsive to this request was, but no longer is, in your possession, custody or control, state:

- a. how the document was disposed of;
- b. the name, current address, and telephone number of the person who currently has possession, custody or control over the document;
- c. the date of disposition;
- d. the name, current address, and telephone number of each person who authorized said disposition or who had or has knowledge of said disposition.

12. If any document responsive to this request cannot be located, describe with particularity the efforts made to locate the document and the specific reason for its disappearance, destruction or unavailability.

13. If a date or other descriptive detail set forth in this request referring to a document, communication, meeting, or other event is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.

14. The request is continuing in nature and applies to any newly discovered document, regardless of the date of its creation. Any document not produced because it has not been located or discovered by the return date should be produced immediately upon location or discovery subsequent thereto.

15. All documents should be bates-stamped sequentially and produced sequentially. In a cover letter to accompany your response, you should include a total page count for the entire production, including both hard copy and electronic documents.

16. Two sets of the documents should be delivered to the Committee, one set to the majority staff in Room 316 of the Ford House Office Building and one set to the minority staff in Room 564 of the Ford House Office Building. You should consult with Committee majority staff regarding the method of delivery prior to sending any materials.

17. In the event that a responsive document is withheld on any basis, including a claim of privilege, you should provide the following information concerning any such document: (a) the reason the document is not being produced; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; (e) the relationship of the author and addressee to each

other; and (f) any other description necessary to identify the document and to explain the basis for not producing the document. If a claimed privilege applies to only a portion of any document, that portion only should be withheld and the remainder of the document should be produced. As used herein, "claim of privilege" includes, but is not limited to, any claim that a document either may or must be withheld from production pursuant to any statute, rule, or regulation.

18. If the request cannot be complied with in full, it should be complied with to the extent possible, which should include an explanation of why full compliance is not possible.

19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; (2) documents responsive to the request have not been destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee since the date of receiving the Committee's request or in anticipation of receiving the Committee's request, and (3) all documents identified during the search that are responsive have been produced to the Committee, identified in a privilege log provided to the Committee, as described in (17) above, or identified as provided in (10), (11) or (12) above.

DEFINITIONS

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra-office communications, electronic mail ("e-mail"), instant messages, calendars, contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, power point presentations, spreadsheets, and work sheets. The term "document" includes all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments to the foregoing, as well as any attachments or appendices thereto. The term "document" also means any graphic or oral records or representations of any kind (including, without limitation, photographs, charts, graphs, voice mails, microfiche, microfilm, videotapes, recordings, and motion pictures), electronic and mechanical records or representations of any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs, back up tape, memory sticks, recordings, and removable computer media such as thumb drives, flash drives, memory cards, and external hard drives), and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, electronic format, disk, videotape or otherwise. A document bearing any notation not part of the original text is considered to be a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term "documents in your possession, custody or control" means (a) documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, or representatives acting on your behalf; (b) documents that you have a legal right to obtain, that you have a right to copy, or to which you have access; and (c) documents that have been placed in the possession, custody, or control of any third party.

3. The term "communication" means each manner or means of disclosure, transmission, or exchange of information, in the form of facts, ideas, opinions, inquiries, or otherwise, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, e-mail, instant message, discussion, release, personal delivery, or otherwise.

4. The terms "and" and "or" should be construed broadly and either conjunctively or disjunctively as necessary to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes the plural number, and vice versa. The masculine includes the feminine and neuter genders.

5. The terms "person" or "persons" mean natural persons, firms, partnerships, associations, limited liability corporations and companies, limited liability partnerships, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, other legal, business or government entities, or any other organization or group of persons, and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof.

6. The terms "referring" or "relating," with respect to any given subject, mean anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject.

7. The terms "you" or "your" mean and refers to

For government recipients:

"You" or "your" means and refers to you as a natural person and the United States and any of its agencies, offices, subdivisions, entities, officials, administrators, employees, attorneys, agents, advisors, consultants, staff, or any other persons acting on your behalf or under your control or direction; and includes any other person(s) defined in the document request letter.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY CHARTER

NATIONAL ADVISORY COUNCIL FOR ENVIRONMENTAL POLICY AND TECHNOLOGY

1. Committee's Official Designation (Title):

National Advisory Council for Environmental Policy and Technology (NACEPT)

2. Authority:

This charter renews the National Advisory Council for Environmental Policy and Technology in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2. The NACEPT is in the public interest and supports the Environmental Protection Agency (EPA) in performing its duties and responsibilities.

3. Objectives and Scope of Activities:

NACEPT's scope involves advising the EPA Administrator on a broad range of crosscutting issues associated with EPA's environmental management on matters relating to activities and functions under federal environmental statutes, executive orders, regulations, and policies. NACEPT advises on ways to improve the development and implementation of domestic and international environmental management policies, programs, and technologies.

The major objectives are to provide advice and recommendations on:

- a. Identifying approaches to improve the development and implementation of domestic and international environmental management policies and programs;
- b. Providing guidance on how EPA can most efficiently and effectively implement innovative approaches throughout the Agency and its programs;
- c. Identifying approaches to enhance information and technology planning;
- d. Fostering improved approaches to environmental management in the fields of economics, finance, and technology;
- e. Increasing communication and understanding among all levels of government, business, non-governmental organizations, academia, and tribal governments/communities, with the goal of increasing non-federal resources and improving the effectiveness of federal and non-federal resources directed at solving environmental problems; and

- f. Implementing statutes, executive orders and regulations, as well as reviewing and assessing progress in their implementation.

4. Description of Committee's Duties:

The duties of the NACEPT are solely to provide independent advice to EPA.

5. Official(s) to Whom the Committee Reports:

NACEPT will submit advice and recommendations and report to the EPA Administrator through the Office of Administration and Resources Management (OARM).

6. Agency Responsible for Providing the Necessary Support:

EPA will be responsible for financial and administrative support. Within EPA, this support will be provided by the OARM.

7. Estimated Annual Operating Costs and Work Years:

The estimated annual operating cost of the NACEPT Council and its subcommittees is \$350,000 which includes 1.8 person-years of support.

8. Designated Federal Officer:

A full-time or permanent part-time employee of EPA will be appointed as the Designated Federal Officer (DFO). The DFO or a designee will be present at all meetings of the advisory committee and subcommittees. Each meeting will be conducted in accordance with an agenda approved in advance by the DFO. The DFO is authorized to adjourn any meeting when he or she determines it is in the public interest to do so, and will chair meetings when directed to do so by the official to whom the committee reports.

9. Estimated Number and Frequency of Meetings:

NACEPT expects to meet approximately two (2) to three (3) times a year. Meetings may occur approximately once every four (4) months or as needed and approved by the DFO. EPA may pay travel and per diem expenses when determined necessary and appropriate.

As required by FACA, the NACEPT will hold open meetings unless the EPA Administrator determines that a meeting or a portion of a meeting may be closed to the public in accordance

with 5 U.S.C. 552b(c). Interested persons may attend meetings, appear before the committee as time permits, and provide oral/written comments to the Council.

10. Duration and Termination:

NACEPT will be examined annually and will exist until the EPA determines the committee is no longer needed. This charter will be in effect for two years from the date it is filed with Congress. After the initial two-year period, the charter may be renewed as authorized in accordance with Section 14 of FACA.

11. Member Composition:

The NACEPT Council will be composed of approximately twenty-five (25) to thirty (30) members who will serve as Representative members of non-federal interests, Regular Government Employees (RGEs), or Special Government Employees (SGEs). Representative members are selected to represent the points of view held by organizations, associations, or classes of individuals. In selecting members, EPA will consider candidates from federal, state, local and tribal governments, the finance, banking, and legal communities, business and industry, professional and trade associations, environmental advocacy groups, national and local environmental non-profit groups, including public interest groups, and academic institutions.

12. Subgroups:

EPA, or NACEPT with EPA approval, may form NACEPT subcommittees or workgroups for any purpose consistent with this charter. Such subcommittees or workgroups may not work independently of the chartered committee and must report their recommendations and advice to the chartered NACEPT for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered committee nor can they report directly to the Agency.

13. Recordkeeping:

The records of the committee, formally and informally established subcommittees, or other subgroups of the committee, will be handled in accordance with NARA General Records Schedule 6.2 and EPA Records Schedule 1024 or other approved agency records disposition schedule. Subject to the Freedom of Information Act, 5 U.S.C. 552, these records will be available for public inspection and copying, in accordance with the Federal Advisory Committee Act.

May 16, 2016

Agency Approval Date

May 18, 2016

GSA Consultation Date

June 6, 2016

Date Filed with Congress

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY CHARTER

PESTICIDE PROGRAM DIALOGUE COMMITTEE

1. **Committee's Official Designation (Title):**

Pesticide Program Dialogue Committee

2. **Authority:**

This charter renews the Pesticide Program Dialogue Committee (PPDC) in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App.2. PPDC is in the public interest and supports EPA in performing its duties and responsibilities under the Federal Insecticide, Fungicide and Rodenticide Act; the Federal Food, Drug and Cosmetic Act; the amendments to both of these major pesticide laws by the Food Quality Protection Act (FQPA) of 1996; and the Pesticide Registration Improvement Renewal Act.

3. **Objectives and Scope of Activities:**

EPA's Office of Pesticide Programs (OPP) is entrusted with the important responsibilities of ensuring that Americans are not exposed to unsafe levels of pesticides in food, protecting from unreasonable risk and educating those who apply or are exposed to pesticides occupationally or through use of products, and protecting the environment and special ecosystems from potential risks posed by pesticides.

PPDC is a policy-oriented committee that will provide policy advice, information and recommendations to EPA. PPDC will provide a public forum to discuss a wide variety of pesticide regulatory development and reform initiatives, evolving public policy and program implementation issues, and policy issues associated with evaluating and reducing risks from use of pesticides.

The major objectives are to provide policy advice, information and recommendations on:

- a. Developing practical, protective approaches for addressing pesticide regulatory policy, program implementation, environmental, technical, economic; and other policy issues; and
- b. Reviewing proposed modifications to OPP's current policies and procedures, including the technical and economic feasibility of any proposed regulatory changes to the current process of registering and reregistering pesticides

4. **Description of Committees Duties:**

The duties of PPDC are solely to provide advice to EPA.

5. Official(s) to Whom the Committee Reports:

PPDC will provide policy advice, information and recommendations, and report to the EPA Administrator, through the Director of the Office of Pesticide Programs, Office of Chemical Safety and Pollution Prevention.

6. Agency Responsible for Providing the Necessary Support:

EPA will be responsible for financial and administrative support. Within EPA, this support will be provided by the Office of Pesticide Programs, Office of Chemical Safety and Pollution Prevention.

7. Estimated Annual Operating Costs and Work Years:

The estimated annual operating cost of the PPDC is \$250,000, which includes 1.5 person-years of support.

8. Designated Federal Officer:

A full-time or permanent part-time employee of EPA will be appointed as the Designated Federal Officer (DFO). The DFO or a designee will be present at all of the meetings of the advisory committee and subcommittees. Each meeting will be conducted in accordance with an agenda approved in advance by the DFO. The DFO is authorized to adjourn any meeting when he or she determines it is in the public interest to do so, and will chair meetings when directed to do so by the official to whom the committee reports.

9. Estimated Number and Frequency of Meetings:

PPDC expects to meet approximately two (2) times a year. Meetings may occur approximately once every six (6) months or as needed and approved by the DFO. EPA may pay travel and per diem expenses when determined necessary and appropriate.

As required by FACA, the PPDC will hold open meetings unless the Administrator determines that a meeting or a portion of a meeting may be closed to the public in accordance with 5 U.S.C. 552b(c). Interested persons may attend meetings, appear before the committee as time permits and file comments with the PPDC.

10. Duration and Termination:

PPDC will be examined annually and will exist until the EPA determines the committee is no longer needed. This charter will be in effect for two years from the date it is filed with Congress. After this two-year period, the charter may be renewed as authorized in accordance with Section 14 of FACA.

11. Member Composition:

PPDC will be composed of approximately forty (40) members. Members will serve as Representative members of non-Federal interests, Regular Government Employees (RGEs), or

Special Government Employees (SGEs). Representative members are selected to represent the points of view held by specific organizations, associations, or classes of individuals. In selecting members, EPA will consider candidates from pesticide user, grower and commodity groups; consumer and environmental/public interest groups; farm worker organizations; pesticide industry and trade associations; State, local and Tribal governments; Federal government; academia; the general public; animal welfare and public health organizations.

12. Subgroups:

EPA, or the PPDC with EPA's approval, may form subcommittees or workgroups for any purpose consistent with this charter. Such subcommittees or workgroups may not work independently of the chartered committee and must report their recommendations and advice to the chartered PPDC for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered committee nor can they report directly to the EPA.

13. Recordkeeping:

The records of the committee, formally and informally established subcommittees, or other subgroups of the committee, will be handled in accordance with NARA General Records Schedule 6.2 and EPA Records Schedule 181 or other approved agency records disposition schedule. Subject to the Freedom of Information Act, 5 U.S.C. 552, these records will be available for public inspection and copying, in accordance with the Federal Advisory Committee Act.

OCT 09 2015

Agency Approval Date

OCT 14 2015

GSA Consultation Date

Date Filed with Congress

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY CHARTER

NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL

1. Committee's Official Designation (Title):

National Environmental Justice Advisory Council

2. Authority:

This charter renews the National Environmental Justice Advisory Council (NEJAC) in accordance with the requirements of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2. The NEJAC is in the public interest and supports the Environmental Protection Agency (EPA) in performing its duties and responsibilities.

3. Objectives and Scope of Activities:

The NEJAC will provide independent advice and recommendations to the Administrator about broad, cross-cutting issues related to environmental justice. The NEJAC's efforts will include evaluation of a broad range of strategic, scientific, technological, regulatory, community engagement and economic issues related to environmental justice.

4. Description of Duties:

The duties of the NEJAC are solely to advise the EPA. The NEJAC will provide advice and recommendations about EPA efforts to:

- a. Integrate environmental justice considerations into Agency programs, policies and activities
- b. Improve the environment or public health in communities disproportionately burdened by environmental harms and risks
- c. Address environmental justice to ensure meaningful involvement in EPA decision-making, build capacity in disproportionately-burdened communities, and promote collaborative problem-solving for issues involving environmental justice
- d. Strengthen its partnerships with other governmental agencies, such as other Federal agencies and state, tribal, or local governments, regarding environmental justice issues
- e. Enhance research and assessment approaches related to environmental justice

5. Agency or Official to Whom the Committee Reports:

The NEJAC will provide advice and recommendations, and report to the EPA Administrator through the Office of Environmental Justice, Office of Enforcement and Compliance Assurance.

6. Support:

EPA will be responsible for financial and administrative support. Within EPA, this support will be provided by the Office of Environmental Justice, Office of Enforcement and Compliance Assurance.

7. Estimated Annual Operating Costs and Staff Years:

The estimated annual operating cost of the NEJAC is \$315,000, which includes 1.5 person-years of support.

8. Designated Federal Officer:

A full-time or permanent part-time employee of EPA will be appointed as the Designated Federal Officer (DFO). The DFO or a designee will be present at all of the meetings of the advisory committee and subcommittees. Each meeting will be conducted in accordance with an agenda approved in advance by the DFO. The DFO is authorized to adjourn any meeting when he or she determines it is in the public interest to do so, and will chair meetings when directed to do so by the official to whom the committee reports.

9. Estimated Number and Frequency of Meetings:

The NEJAC expects to meet approximately three (3) to six (6) times a year. Meetings may occur approximately once every three to four months, as needed and approved by the Designated Federal Officer (DFO), or his/her designee. EPA may pay travel and per diem expenses when determined necessary and appropriate.

As required by FACA, the NEJAC will hold open meetings, unless the EPA Administrator determines that a meeting or a portion of a meeting may be closed to the public in accordance with 5 U.S.C. 552b(c). Interested persons may attend meetings, appear before the committee as time permits, and file comments with the NEJAC.

10. Duration and Termination:

The NEJAC will be examined annually and will exist until the EPA determines the Council is no longer needed. This charter will be in effect for two years from the date it is filed with Congress. After this two-year period, the charter may be renewed in accordance with Section 14 of FACA.

11. Membership and Designation:

The NEJAC will be composed of approximately 25-30 members who will generally serve as representative members of non-federal interests. If needed, members may be appointed to serve as Regular Government Employees (RGEs) or Special Government Employees (SGEs). Representative members are selected to represent the points of view held by organizations, associations, or classes of individuals. In selecting representative members, EPA will consider candidates from among, but not limited to: community-based groups; industry and business; academic and educational institutions; state and local governments; indigenous organization and Federally-recognized tribal governments and Indigenous groups; and non-governmental and environmental groups, as deemed appropriate.

12. Subcommittees:

EPA, or the NEJAC with EPA approval, may form subcommittees or work groups for any purpose consistent with this charter. Such subcommittees or work groups may not work independently of the chartered committee and must report their proposed recommendations and advice to the chartered NEJAC for full deliberation and discussion. Subcommittees or work groups have no authority to make decisions on behalf of the chartered committee nor can they report directly to the EPA.

13. Recordkeeping:

The records of the committee, formally and informally established subcommittees, or other subgroups of the committee, will be handled in accordance with NARA General Records Schedule 6.2 and EPA Records Schedule 1024 or other approved agency records disposition schedule. Subject to the Freedom of Information Act, 5 U.S.C. 552, these records will be available for public inspection and copying, in accordance with the Federal Advisory Committee Act.

August 11, 2016

Agency Approval Date

August 18, 2016

GSA Consultation Date

September 12, 2016

Date Filed with Congress

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY CHARTER

FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT SCIENTIFIC ADVISORY PANEL

1. Committee's Official Designation (Title):

Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel

2. Authority:

This charter renews the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel (FIFRA SAP) in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App.2. The FIFRA SAP is in the public interest and supports the U.S. Environmental Protection Agency (EPA) in performing its duties and responsibilities. The FIFRA SAP is a statutory advisory committee created on November 28, 1975 pursuant to section 25(d) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended by Public Laws 94-140, 95-396, 96-539, 98-201, and 100-532. Section 104 of the Food Quality Protection Act of 1996 (Public Law 104-170) establishes a Science Review Board consisting of sixty scientists who shall be available to the Scientific Advisory Panel on an ad hoc basis to assist in reviews conducted by the Panel.

3. Objectives and Scope of Activities:

FIFRA SAP will provide comments, evaluations, and recommendations on pesticides and pesticide-related issues as to the impact on health and the environment of regulatory actions.

4. Description of Duties:

The duties of the FIFRA SAP are solely to provide advice to the EPA. The FIFRA SAP will provide comments, evaluations, and recommendations on:

- a. The impact on health and the environment of matters arising under Sections 6(b), 6(c) and 25(a) of FIFRA
- b. Analyses, reports and operating guidelines to improve the effectiveness and quality of scientific analyses made by EPA
- c. Analyses Guidelines to improve the effectiveness and quality of scientific testing and of data submitted to EPA
- d. Methods to ensure that pesticides do not cause “unreasonable adverse effects on the environment,” as defined in Section 2 (bb) of FIFRA
- e. Major scientific studies (whether conducted by EPA or other parties) supporting actions under Sections 6(b), 6(c), and 25(a) of FIFRA

- f. Major pesticide and pesticide-related scientific studies and issues in the form of a peer review

5. Agency or Official to Whom the Committee Reports:

The FIFRA SAP will report to the EPA Administrator through the EPA's Assistant Administrator for the Office of Chemical Safety and Pollution Prevention (OCSPP).

6. Support:

The EPA will be responsible for financial and administrative support. Within the EPA, this support will be provided by the Office of Chemical Safety and Pollution Prevention (OCSPP).

7. Estimated Annual Operating Costs and Staff Years:

The estimated annual operating cost of FIFRA SAP is \$1,400,000, which includes 5.0 person-years of support.

8. Designated Federal Officer:

A full-time or permanent part-time employee of the EPA will be appointed as the Designated Federal Officer (DFO). The DFO or a designee will be present at all meetings of the advisory committee and subcommittees. Each meeting will be conducted in accordance with an agenda approved in advance by the DFO. The DFO is authorized to adjourn any meeting when he or she determines it is in the public interest to do so, and will chair meetings when directed to do so by the official to whom the committee reports.

9. Estimated Number and Frequency of Meetings:

The FIFRA SAP expects to meet approximately six (6) times a year. Meetings may occur approximately every two (2) months or as needed and approved by the DFO. EPA may pay travel and per diem expenses when determined necessary and appropriate.

As required by FACA, FIFRA SAP will hold open meetings unless the EPA Administrator determines that a meeting or a portion of a meeting may be closed to the public in accordance with 5 U.S.C. 552b(c). Interested persons may attend meetings, appear before the committee as time permits, and file comments with the FIFRA SAP.

10. Duration and Termination:

The FIFRA SAP will be needed on a continuing basis. This charter will be in effect for two years from the date it is filed with Congress. After this two-year period, the charter may be renewed as authorized in accordance with Section 14 of FACA.

11. Membership and Designation:

As required by FIFRA, the FIFRA SAP will be composed of seven members, including the Chairperson, and members will be selected from twelve nominees provided by the National

Institutes of Health (NIH) and the National Science Foundation (NSF). Members will serve as Special Government Employees (SGE) or Regular Government Employees (RGE). In selecting members, EPA will consider candidates on the basis of their professional qualifications to assess the effects of pesticides on health and the environment. To the extent feasible, the panel membership will include representation of the following disciplines: toxicology, pathology, environmental biology, and related sciences (e.g., pharmacology, biotechnology, bio-chemistry, bio-statistics). The expertise of the seven members of the permanent Panel is augmented by the use of ad hoc consultants (scientists) covering a variety of scientific disciplines to assist in reviews conducted by the FIFRA SAP, as provided in Section 104 of the Food Quality Protection Act of 1996.

12. Subcommittees:

The EPA, or FIFRA SAP with EPA's approval, may form FIFRA SAP subcommittees or workgroups for any purpose consistent with this charter. Such subcommittees or workgroups may not work independently of the chartered committee and must report their recommendations and advice to the chartered FIFRA SAP for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered committee nor can they report directly to the Agency.

13. Recordkeeping:

The records of the committee, formally and informally established subcommittees, or other subgroups of the committee, will be handled in accordance with NARA General Records Schedule 6.2 and EPA Records Schedule 1024 or other approved agency records disposition schedule. Subject to the Freedom of Information Act, 5 U.S.C. 552, these records will be available for public inspection and copying, in accordance with the Federal Advisory Committee Act.

September 13, 2016
Agency Approval Date

October 17, 2016
Date Filed with Congress

QUESTIONS FOR THE RECORD
U.S. House Committee on Transportation and Infrastructure

Impacts of the Proposed Waters of the United States Rule on State and Local Government
February 4, 2015

Questions for EPA Administrator McCarthy

Note: The responses reflect information based on the issuance of the final rule, published in the *Federal Register* on June 29, 2015, not the draft rule in-place at the time the questions were initially posed. This will help ensure that there is no confusion, given changes made in the final rule based on the extensive input received and the length of time that has passed since the rule was finalized.

- 1. The proposed rule talks about regulating “waters.” How do you specifically define “water”? Is any wet area on land a potential “water” under the proposed rule? If not, please describe in detail what is, and is not, a “water.”**

Response: The EPA and the Department of the Army (hereafter, the agencies) have not defined water in a rule, though they do define the term waters of the United States. A wet area is not automatically considered a water of the United States. Only waters of the United States are regulated under the Clean Water Act.

- 2. We understand that EPA and the Corps received over 1 million comments from the public on the proposed rule, but the docket for the rule only includes approximately 19,400 “substantive” comments.**
- a. Did the agencies receive any other substantive comments besides the approximately 19,400 comments in the docket?**

Response: All unique letters have been posted in the docket, which include both substantive and non-substantive comments. Multiple copies of mass mail-in campaigns are not posted to the docket, though the number of Americans providing the same comment are noted.

- b. Were the remaining 900,000-plus comments received considered “not” substantive? Were these nonsubstantive from mass mail-in campaigns? Please describe the nature of these other, nonsubstantive comments.**

Response: The only letters not posted to the public docket are duplicate copies of identical letters received as part of mass mail-in campaigns. All public comments, including examples of every mass mail-in campaign, are available online at regulations.gov.

- c. On February 26th, 2015, Administrator McCarthy told the House Appropriations Committee that 87 percent of the comments received were positive responses. Is that 87 percent of the 1 million comments received? Were**

most of the 900,000-plus comments that made up Administrator McCarthy's 87 percent statistic not separate or substantive comments, but were from mass mail-in campaigns?

Response: Yes, more than 87 percent of the more than one million comments received were supportive of policies in the proposed rule.

d. Of the approximately 19,400 "substantive" comments received, how many were positive? How many were opposed? How many were neutral?

Response: In the end, approximately 20,000 comments were determined to be unique and were, therefore, posted to the docket. Posting of unique comments is standard practice to allow efficient public access to all comments received.

- 3. EPA recently indicated that it is planning to finalize the rule during the Spring of 2015.**
- a. Are EPA and the Corps still planning to promulgate the rule in the Spring of 2015? If so, please explain specifically how the EPA and the Corps plan to review and take into consideration each of the 1 million comments that were received, prepare responses to all of the comments, and revise the rule based on the multitude of comments received, all within a period of a few months?**

Response: All comments received were reviewed and a response to comments document was completed. The final rule was signed on May 27, 2015, and published in the Federal Register on June 29, 2015.

b. Will the Agencies prepare a detailed response to the public comments? How will the EPA respond to each and every issue raised in each comment, or does the EPA plan to gloss over the issues in the response to public comment?

Response: All comments received were reviewed and a response to comments document was completed. The final response to comments document was posted on June 24, 2015.

- 4. In developing its proposed rule, the Agencies failed to conduct outreach to state and local governments. The lack of appropriate consultation was pointed out in comments filed by many state and local officials, plus organizations representing state and local governments. If EPA and the Corps worked with states to develop the proposed rule as they claim, why did the majority of states write comments opposing the rule as proposed and asking the Agencies to withdraw or substantially revise the rule?**

Response: EPA and the Corps conducted significant outreach on the proposed rule, including to state and local governments.

As part of the agencies' consultation process, the EPA held three in-person meetings and two phone calls in the fall and winter of 2011, to coordinate with state organizations prior to beginning formal rulemaking. EPA also worked closely with states and municipalities after the

rule was proposed. Organizations involved include the National Governors Association, the National Conference of State Legislatures, the Council of State Governments, the National Association of Counties, the National League of Cities, the U.S. Conference of Mayors, the County Executives of America, the National Associations of Towns and Townships, the International City/County Management Association, and the Environmental Council of the States (ECOS). In addition, the National Association of Clean Water Agencies (NACWA) and the Association of Clean Water Administrators (ACWA) were invited to participate. As part of the consultation, 12 counties, eight associations and various state agencies and offices from five states (Alaska, Wyoming, Kansas, Tennessee, and Texas) submitted written comments. In addition, the EPA held numerous outreach calls with state and local government agencies seeking their technical input. More than 400 people from a variety of state and local agencies and associations, including the Western Governors' Association, the Western States Water Council and the Association of State Wetland Managers participated in various calls and meetings. The agencies' engagement with states continued through a series of conference calls organized by both ACWA and ECOS.

During the public comment period, the agencies met with stakeholders across the country to facilitate their input on the proposed rule. We talked with a broad range of interested groups including farmers, businesses, states and local governments, water users, energy companies, coal and mineral mining groups, and conservation interests. In October 2014, the EPA conducted a second small business roundtable to facilitate input from the small business community, which featured more than 20 participants that included small government jurisdictions as well as construction and development, agricultural, and mining interests. After releasing the proposal in March, the EPA and the Army conducted unprecedented outreach to a wide range of stakeholders, holding over 400 meetings all across the country to offer information, listen to concerns, and answer questions.

In addition, the EPA asked the EPA's Local Government Advisory Committee's Protecting America's Waters Workgroup for advice and recommendations on the proposed rule. The LGAC Protecting America's Waters Workgroup held a series of public meetings to hear from local elected and appointed officials at several geographic field locations. The workgroup meetings provided an opportunity for the workgroup to hear from local officials on local issues of concern related to the proposed rule. State, local, and tribal officials were invited to attend these open meetings. The Local Government Advisory Committee is a formal advisory committee chartered under the Federal Advisory Committee Act and is composed primarily of local, state, and tribal elected and appointed officials from around the country. The LGAC sent their final recommendations to the Administrator on November 5, 2014, which the agencies carefully considered as they developed the final rule.

These actions exemplify the agencies' commitment to provide a transparent and effective opportunity for all interested Americans to participate in the rulemaking process.

5. EPA has said it has done extensive outreach to stakeholders during the comment period, and has conducted some 400 stakeholder meetings around the country.

- a. Please identify each of the stakeholder meetings that was held, including the data and location where each was held.**

- b. Provide a complete list of all Federal agency (EPA, Corps, and any other agencies) and Federal contractor participants at each stakeholder meeting.**
- c. Identify all of the stakeholders who participated at each stakeholder meeting.**
- d. Provide all handouts and other.**

Response: After releasing the proposed rule in March 2014, the EPA and the Army conducted unprecedented outreach to a wide range of stakeholders, holding over 400 meetings all across the country to offer information, listen to concerns, and answer questions. To promote transparency, a list of the outreach meetings that were held is posted in the public docket.¹ Where available, this list includes the location of the meeting, groups represented, topics discussed, and materials provided. Individual attendees were not recorded.

- 6. The Small Business Administration's Office of Advocacy (SBA) recently concluded that EPA and the Corps have improperly certified the proposed rule under the Regulatory Flexibility Act because it would have direct, significant effects on small entities, and recommended that the Agencies withdraw the rule and that the EPA conduct a Small Business Advocacy Review panel before proceeding any further with this rulemaking. Furthermore, the Small Business Administration along with many governmental and private stakeholders, concluded that EPA and the Corps conducted a flawed economic analysis of the proposed rule. The analysis ignored the impact of the rule on CWA's regulatory programs and did not adequately evaluate impacts of the proposed rule.**
 - a. What is EPA's response to the SBA Office of Advocacy's comments on the proposed rule?**

Response: The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis for any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. As part of the Waters of the U.S. rulemaking, the EPA certified that the proposed rule will not have a significant economic impact on a substantial number of small entities.

The RFA applies to significant, disproportionate adverse economic impacts on small entities subject to the rule; the primary purpose of the initial regulatory flexibility analysis is to identify and address regulatory alternatives which minimize any significant economic impact of the rule on small entities. 5 U.S.C. 603. Because this rule sought only to clarify the existing scope of the Clean Water Act, this action will not adversely affect small entities to a greater degree than the existing regulations. The agencies' proposed rule is not designed to subject any entities of any size to any

¹ A list of meetings conducted at the headquarters level is available at <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OW-2011-0880-13183>. A list of meetings conducted at the regional level is available at <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OW-2011-0880-13182>.

specific regulatory burden. *Cement Kiln Recycling Coalition v. EPA*, 255 F.3d 855 (D.C. Cir. 2001). Rather, it is designed to clarify the scope of the waters of the United States, consistent with U.S. Supreme Court precedent. Following publication of the final rule, the Government Accountability Office conducted an independent evaluation of the Agencies' compliance with the Administrative Procedure Act and other rulemaking requirements, and concluded that the Agencies had successfully satisfied them, including the Regulatory Flexibility Act.

b. Why wasn't a Small Business Advocacy Review panel held? Will you commit to re-examining the impacts of the proposed rule on small entities and conducting a Small Business Advocacy Review panel before proceeding any further with this rulemaking?

Response: For the reasons described above, a panel was not convened. At the same time, the agencies recognize the substantial interest in this issue by small governmental jurisdictions and other small-entity stakeholders. In light of this interest, the EPA and the Corps sought early and wide input from representatives of small entities while formulating a proposed rule. This process enabled the agencies to hear directly from these representatives, at an early stage, about how they should approach this complex question of statutory interpretation, together with related issues that such representatives of small entities identified for possible consideration in separate proceedings.

The EPA has also prepared a report summarizing its small entity outreach, the results of this outreach, and how these results informed the development of this proposed rule. This report is publicly available in the docket for the rule. On October 15, 2014, the agencies hosted a second roundtable to facilitate input from small entities. A summary of this roundtable is also available in the docket for the rule. As indicated above, following publication of the final rule, the U.S. Government Accountability Office conducted an independent evaluation of the Agencies compliance with the Administrative Procedure Act and other rulemaking requirements, and concluded that the Agencies had successfully satisfied them, including the Regulatory Flexibility Act.

c. Will you commit to conducting a new economic impacts analysis of the proposed rule, taking into account and specifically addressing the concerns stated by SBA and the stakeholders, before proceeding any further with this rulemaking?

Response: An updated economic analysis was completed for the final rule. This analysis includes estimated indirect costs and benefits associated with the rule requirements, including effects to Clean Water Act programs. EPA reviewed and considered all comments on the economic analysis in developing the final analysis document. The final economic analysis was released with the final rule on May 27, 2015.

7. EPA and the Corps state that this rule is not an expansion of jurisdiction, that it is only a clarification. What exactly will the rule clarify? Specifically what waters are in and what waters are outside of Federal jurisdiction under this rule? Will the Agencies add clarity and specificity to the final rule text, or will the Agencies keep the final rule text

general and add discussion to the preamble of the final rule or to supplemental “guidance?”

Response: The final rule clarifies which waters are within and which are outside the scope of federal jurisdiction under the Clean Water Act. This clarity is provided in rule text, by listing features that are not jurisdictional, and in discussion of the preamble to the final rule.

The most substantial change was the deletion of the existing regulatory provision that defined waters of the United States as including all other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce including any such waters: (i) Which are or could be used by interstate or foreign travelers for recreational or other purposes; (ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or (iii) which are used or could be used for industrial purposes by industries in interstate commerce. 33 CFR 328.3(a)(3); 40 CFR 122.2. Under the final rule, these other waters (those which do not fit within the categories of waters jurisdictional by rule) would only be jurisdictional upon a case-specific determination that they have a significant nexus to traditional navigable waters, interstate waters, or the territorial seas.

Additionally, the final rule specifically excludes groundwater from regulation and lists a number of other exclusions previously only discussed in preamble language. The exclusions will apply to waters regardless of whether they might otherwise be considered jurisdictional under paragraphs (a)(4)-(a)(8) of the rule. Also, for the first time, under the rule the agencies determined to exclude by rule certain ditches that have intermittent or ephemeral flow, and to exclude ditches that are not tributaries to traditional navigable waters, interstate waters, or the territorial seas, regardless of their flow regime. These excluded ditches cannot be recaptured under any of the jurisdictional categories of waters of the U.S. under the proposed rule except under paragraphs (a)(1)-(a)(3). The final rule excludes ditches with ephemeral flow that are not a relocated tributary or excavated in a tributary, and ditches with intermittent flow that are not a relocated tributary, or excavated in a tributary, or drain wetlands.

8. The Agencies have been trying to create the impression that ditches are not regulated.

a. Describe specifically in which circumstances what ditches are considered jurisdictional under the rule and what ditches are not jurisdictional.

Response: The final rule excludes ditches with ephemeral flow that are not a relocated tributary or excavated in a tributary, and ditches with intermittent flow that are not a relocated tributary, or excavated in a tributary, or drain wetlands. The final rule also excludes ditches that do not flow directly or indirectly into a traditional navigable water, an interstate water, or the territorial seas. Ditches may be jurisdictional if they meet paragraphs (a)(1)-(a)(3). Ditches may also be jurisdictional if they are not excluded and meet the definition of tributary.

b. Describe specifically in which circumstances what ditches are considered a tributary under the rule and what ditches are not a tributary.

Response: The final rule excludes ditches with ephemeral flow that are not a relocated tributary or excavated in a tributary, and ditches with intermittent flow that are not a relocated tributary, or excavated in a tributary, or drain wetlands. The final rule also excludes ditches that do not flow directly or indirectly into a traditional navigable water, an interstate water, or the territorial seas. Ditches with perennial flow and that otherwise meet the definition of tributary as described in the final rule and preamble are covered by the regulations.

c. If a ditch is determined to be jurisdictional, will the ditch be subject to water quality standards? Total Maximum Daily Loads (TMDLs)?

Response: States typically develop water quality standards for general categories of waters, which have been and are inclusive of the types of waters that have been jurisdictional. This rule does not change the requirements for state water quality standards to be consistent with the Clean Water Act (e.g., designated uses, criteria to protect those uses, antidegradation policies). If a state determines water quality standards need to be developed for specific types of waters, that need would exist with or without this rule.

States are required to list waters that are impaired, but have discretion to prioritize this list for TMDL development, which may proceed over a period of several years under existing EPA policy. Monitoring, assessment, and TMDL development tend to occur in water segments where the agencies assert jurisdiction under current practices.

9. In determining whether a ditch is jurisdictional, how will connection be determined? Will it be through the physical ditch structure which directly (or indirectly) connects to a “water of the U.S.”?

Response: A ditch must meet the definition of a tributary in the final rule, and not be otherwise excluded, to be determined jurisdictional. A ditch can also be jurisdictional if it meets the paragraphs (a)(1)-(a)(3).

a. Is there a limit to connectivity? Can a ditch that is physically connected to another ditch (for example, via a pipe, or other infrastructure, or convergence) that ultimately leads to a “water of the U.S.” be considered jurisdictional even if it is hundreds of miles away and doesn’t have a relatively permanent flow of water?

Response: A ditch is jurisdictional where it meets the definition of a tributary including both physical characteristics and is not otherwise excluded. A ditch can also be jurisdictional if it meets paragraphs (a)(1)-(a)(3) of the rule.

10. This proposal references “ephemerals.” What is the definition of an “ephemeral” feature? Can a feature be “ephemeral” and not be a stream or tributary and not be jurisdictional? Please explain.

Response: The agencies did not define the term “ephemeral” in the rule.

A feature can be “ephemeral” and not meet the agencies’ regulatory definition of tributary and, therefore, not be jurisdictional. A tributary, as defined in the final rule, must have a bed and banks and an ordinary high water mark, and contribute flow either directly or through other waters to a traditional navigable water, interstate water, or the territorial seas, to be jurisdictional. Where an ephemeral feature does not meet the definition of a tributary that feature would not be jurisdictional as a tributary. The agencies added a specific exclusion for such ephemeral features in the final rule.

11. How will intermittent, ephemeral, and seasonal tributaries be regulated under the proposed rule?

Response: A tributary must have bed and banks and an ordinary high water mark, and contribute flow either directly or through other waters to a traditional navigable water, interstate water, or the territorial seas, to be jurisdictional. An intermittent or ephemeral stream that meets this definition would be jurisdictional.

12. The proposed rule includes an exclusion for ditches that are excavated in uplands and drain only uplands if they do not have water year round. But the rule does not define the term “uplands.” How will uplands be defined? Does it mean that land that is not a wetland?

Response: The term “upland” has been used by the agencies for decades in longstanding practice to mean areas that are not a wetland (as defined in Clean Water Act implementing agency regulations) or other waterbody. The final rule eliminated the use of the word “uplands,” and provides a clearer statement of the types of ditches that are subject to exclusion.

13. EPA states that the exemption for maintenance of drainage ditches will continue, as this exemption is automatic, and that state and local agencies responsible for maintaining ditches do not have to apply for this exclusion. However, even under current rules, it is unclear whether and to what extent the maintenance exemption is allowed for ditches. For example, in some districts, agencies must apply for the exemption while others state the conditions for maintenance activities are too narrow to qualify. Other agencies have been told to discontinue their maintenance activities they believed were previously exempt. Agencies have been told they need to provide the original documents that show the scope, measurements, etc., of these ditches but since many of them may have been dug decades ago, the documentation does not exist.

- a. Please explain specifically how the ditch maintenance exemption will be implemented under the new rule. Will the rule specifically state that all ditch maintenance activities are exempt and do not need prior approval?**

Response: The ditch maintenance exemption is created in the Clean Water Act itself, and further discussed in agency regulations (33 C.F.R. 320-330, 40 C.F.R. Part 232) and in agency guidance letters. The rule defines waters of the U.S. and does not in any way change or address the ditch maintenance exemption or its implementation.

- b. If a state or local agency is conducting routine maintenance activities on the ditch that is near or adjacent to wetland areas, would that make the ditch jurisdictional?**

Response: No, the activities performed on or in the ditch would not make the ditch jurisdictional. Determinations of jurisdiction are based on the characteristics of the ditch and whether the ditch meets the definition of a tributary.□

- 14. Will municipal storm sewer systems, water recycling and reuse, stormwater treatment, and other water treatment related facilities be exempt from jurisdiction under the Clean Water Act under the proposed rule? Or will water recycling supply ponds, constructed wetlands, and other treatment components of this infrastructure jurisdictional and subject to Clean Water Act regulation?**

Response: The final rule expressly excludes stormwater control features created in dry land, detention and retention basins constructed in dry land used for wastewater recycling, as well as groundwater recharge basins and percolation ponds built for wastewater recycling.

- 15. The EPA has said that municipal separate storm sewer systems (MS4s) will not be regulated as “waters of the U.S.” However, EPA also has indicated that there could be a “water of the U.S.” within an MS4 system.**
- a. Please explain what stormwater management facilities are specifically exempt under the proposed rule? What types of facilities are or could be considered jurisdictional waters? Please provide several examples where a “water of the U.S.” might be found within an MS4?**
 - b. Please explain in detail where an MS4 ends and a “water of the U.S.” begins? Can a feature be both an MS4 and a water of the U.S.?**
 - c. If an MS4 is determined to be a “water of the U.S.,” how will that impact the ability to utilize that facility for water quality (e.g., stormwater) treatment? Will water quality standards be applied to such facilities?**

Response: The Army and EPA did not change the jurisdictional status of various components of stormwater systems and drainage networks in the rule. During the public comment period, the agencies received many comments from representatives of cities, counties, and other entities concerned about how the proposed rule may affect stormwater systems. The agencies clarified their policy in the final rule by adding a new exclusion in paragraph (b)(6) for stormwater control features constructed to convey, treat, or store stormwater that are created in dry land.

The EPA considers MS4s to be systems and, in terms of jurisdiction, MS4s should be thought of as component parts and not a singular entity. As was true historically, MS4s can include jurisdictional and non-jurisdictional features. If needed, the jurisdictional status of such components could be evaluated. Implementation of the Clean Water Rule will not alter the manner in which MS4 systems currently operate and are approved under the CWA.

16. What specifically is considered a floodplain and a riparian area under the rule?

Response: The agencies specifically requested comments on the proposed definitions and approaches, to consider options for addressing them in the final rule. As a result, the final rule did not include riparian areas and clarified the term floodplain by making clear that the rule relies on the boundary of the 100-year floodplain or 1500 feet from the Ordinary High Water Mark of a tributary, whichever is less.

QUESTIONS FOR THE RECORD

Congressman Richard Hanna (R-NY)
U.S. House Committee on Transportation and Infrastructure

Impacts of the Proposed Waters of the United States Rule on State and Local Government
February 4, 2015

Questions for EPA Administrator McCarthy

- 1. What support will EPA give in the permitting and implementation process to state environmental agencies currently responsible for enforcing water regulations?**

Response: Now that the rule is final, the EPA and the Department of the Army (hereafter, the agencies) are working to develop outreach materials for the public and state agencies to make it as clear as possible which waters are jurisdictional and which are not. In addition, the agencies have been conducting webinars with state agencies and public stakeholders to help them to better understand the rule.

- 2. How has EPA ensured that states will interpret and implement ambiguously defined provisions in the same way?**

Response: With this rulemaking, the goal is to improve predictability and consistency, which will improve the process for making jurisdictional determinations by minimizing delays and cost. The final rule provides clearer categories of waters that are jurisdictional, as well as a clearer list of the waters and features that are not jurisdictional.

Now that the rule is final, the agencies are developing outreach materials for the public and state agencies to make it as clear as possible which waters are jurisdictional and which are not. In addition the webinars mentioned above, both the preamble to the rule and the response to comments documents include greater discussion on the content of the rule, providing additional clarification.

- 3. A farmer purchased property 25 years ago that was in pasture land when he purchased it. The pasture routinely has wet spots during extremely wet years, and water typically dots the landscape and meanders across the floodplain into a drainage way which experiences seasonal flows occasionally. Drainage flows to a classified water body subject to federal jurisdiction. The farmer maintains a variety of fences for his cattle, including cattle crossings, and periodically fertilizes the entire pasture system. Cultivation of this area occurs under a five year rotation. The farm is conscious of the navigable waters that lie in close proximity to his farm.**

Under the proposed WOTUS rule:

- a. At what point in the floodplain does “upland” drainage become jurisdictional water of the U.S.?”**

Response: Unconfined upland drainage such as sheetflow is not a regulated water, regardless of whether or not it is in the floodplain. In addition, waters in a floodplain associated with normal farming, ranching, or forestry areas are excluded from the definition of adjacent under the rule. As a result, the only circumstances that upland drainage may be regulated is when the drainageway meets the definition of tributary (i.e., has a bed and banks and Ordinary High Water Mark) and is not otherwise excluded or where it is determined to have a significant nexus□based on a case-specific evaluation.

b. Does fertilizing these pastures count as applying nutrients to a jurisdictional water of the U.S.?

Response: No.

c. Does installing fencing or shaping and grading wet areas through cultivation now count as activities regulated through Section 404 dredge and fill permitting?

Response: The final rule does not change the existing statutory exemptions for discharges of dredged and/or fill material into waters of the U.S. associated with normal farming, silviculture, and ranching activities, or any other exempt activity under Section 404(f)(1) of the CWA. Installing fences is not regulated. Cultivation□is exempted under Section 404(f)(1).

d. Who will make such jurisdictional calls?

Response: The Corps is the agency that conducts most of the day-to-day permitting and making jurisdictional determinations under Clean Water Act Section 404. A memorandum of agreement between EPA and the Corps describes the allocation of responsibilities between the EPA and the Corps to determine the geographic jurisdiction of the Section 404 program and the applicability of the exemptions under section 404(f) of the CWA.²

e. Given the close nature of Federal conservation standards and exemptions proposed from the CWA, where do non-participating farmers stand?

Response: The rule does not affect the activity exemptions set forth in the CWA. There is no requirement for a farmer, rancher, or forester to be a USDA-NRCS program participant to utilize these exemptions.

f. The EPA maintains that the list of exempted practices favors agriculture. If this is the case, why didn't EPA choose to pursue the relatively few practices that would require a permit?

Response: Section 404(f) of the CWA covers activity-based exemptions for farmers,

² Memorandum of Agreement Between the Department of the Army and the Environmental Protection Agency Concerning the Determination of the Section 404 Program and the Application of the Exemptions Under Section 404(F) of the Clean Water Act - <http://water.epa.gov/lawsregs/guidance/wetlands/404f.cfm>

ranchers, and foresters. Nothing in the rule affects these exemptions. The rule only clarifies the extent of waters that are and are not covered under the CWA. The rule does address the types of activities in waters of the United States that are regulated because they involve the discharge of a pollutant under CWA section 301.

QUESTIONS FOR THE RECORD

Congressman Sam Graves (R-MO)
U.S. House Committee on Transportation and Infrastructure

Impacts of the Proposed Waters of the United States Rule on State and Local Government
February 4, 2015

Questions for EPA Administrator McCarthy

- 1. The Environmental Protection Agency (EPA), Army Corps of Engineers, and the regulated utility industry rely on nationwide and general permits, under the Clean Water Act sections 402 and 404, to authorize certain projects in jurisdictional waters without the need for individual permits. These general permits have been an especially important tool for energy infrastructure projects, including transmission lines, as well as large solar and wind projects.**

Currently, in order to rely on nationwide permits, utilities are subject to a small acreage limitation of jurisdictional waters that will be affected by “single and complete” projects. In other words, a relevant nationwide permit is limited to a small, individual section of a project that may affect jurisdictional waters. General permits ensure that the project is not significantly harming navigable waters. However, under the proposed “waters of the United States” rule, most if not all ditches, dry washes, and other minor features that a project crosses would be considered a jurisdictional water. It appears the “waters of the United States” rule will make it more difficult to use nationwide permits by making it harder to qualify for them.

I have heard that the EPA doesn’t see it this way. Please explain how linear facilities will continue to be able to use nationwide permits for crossings when more geographic features will be considered as jurisdictional under the rule. Also, please explain how ditches designed to facilitate transmission line construction (or renewable project construction) would not come under current definitions, and how utilities would continue to be able to rely on nationwide and regional general permits as the utilities currently do, especially since these permits are administered by local Corps employees who have to interpret the rules.

Response: The final rule does not alter the Clean Water Act Section 404 permitting process administered by the U.S. Army Corps of Engineers and two authorized states. The final rule does not alter the Corps’ existing nationwide permits (NWPs) that currently streamline the permitting process for activities with minimal adverse effects on the aquatic environment. In general, the EPA and the Department of the Army (hereafter, the agencies) believe the rule may expedite the jurisdictional determination review process in the long-term for certain waters by clarifying jurisdictional matters that have been time-consuming and cumbersome for field staff and the regulated community in light of the 2001 and 2006 Supreme Court cases. The NWP for linear projects is not affected by the rule because the NWP considers each crossing separately – not cumulatively.

The Corps' NWP program authorizes Clean Water Act Section 404 and Rivers and Harbors Act Section 10 discharges that would have no more than minimal adverse effects on the aquatic environment for activities that qualify. For example, Nationwide Permit 3 (Maintenance), Nationwide Permit 12 (Utility Line Activities), and Nationwide Permit 14 (Linear Transportation Projects) may specifically apply to the circumstances described above. Some of these activities may be non-reporting while others may require notification to the Corps. The Corps can provide a permit applicant with additional information regarding which Nationwide Permit might apply to a particular activity. In addition, some Corps districts also have State Programmatic General Permits and Regional General Permits for emergency-type activities allowing for efficient permit decision-making.

Authorization under the CWA is not needed for activities which occur in non-jurisdictional waters/features.

QUESTIONS FOR THE RECORD
Congressman John Katko (R-NY)
U.S. House Committee on Transportation and Infrastructure

Impacts of the Proposed Waters of the United States Rule on State and Local Government
February 4, 2015

Questions for EPA Administrator McCarthy

1. Please provide illustrative examples of what does and does not constitute:

- a. A tributary.**
- b. An upland.**
- c. Adjacent waters.**
- d. Shallow subsurface hydrologic connections as “neighboring” waters.**
- e. A floodplain.**
- f. A significant nexus.**

Response:

- a.** This final rule defines tributaries as waters that are characterized by the presence of physical indicators of flow — bed and banks and ordinary high water mark — and that contribute flow directly or indirectly to a traditional navigable water, an interstate water, or the territorial seas. An example of what does constitute a tributary is a stream that has a bed, banks, and OHWM, and flows into the Hudson River. Examples of what are not tributaries include water features that flow infrequently enough that they do not have bed, banks, and/or an OHWM, and streams that do not connect to a traditional navigable water, interstate water, or the territorial seas.
- b.** The final rule does not define upland and has eliminated use of the term in the exclusions for ditches, in response to the questions created by use of the term in the proposal.
- c.** Under this final rule, adjacent means bordering, contiguous, or neighboring, including waters separated from other waters of the United States by constructed dikes or barriers, natural river berms, beach dunes and the like. Further, waters that connect segments of, or are at the head of, a stream or river are adjacent to that stream or river. Adjacent waters include wetlands, ponds, lakes, oxbows, impoundments, and similar water features. However, it is important to note that adjacent waters do not include waters that are subject to established normal farming, silviculture, and ranching activities under Section 404(f) of the CWA.
- d.** The final rule does not include a provision defining neighboring based on shallow subsurface flow, though such flow may be an important factor in evaluating a water on a case-specific basis under paragraphs (a)(7) and (a)(8) to determine if the water has a significant nexus to a traditional navigable water (TNW), interstate water, or territorial sea. In the evaluation of whether a water individually or in combination with other similarly situated waters has a significant nexus to a TNW, interstate water, or the territorial seas, a variety of factors will influence the chemical, physical,

or biological connections the water has with the downstream TNW, interstate water, or the territorial seas, including distance from a jurisdictional water, the presence of surface or shallow subsurface hydrologic connections, and density of waters of the same type.

- e. The final rule uses floodplain to mean a 100-year floodplain. The agencies intend to rely on FEMA maps wherever possible to identify the extent and location of the 100-yr floodplain. An example of an area that is not considered a floodplain are any areas outside the 100-yr floodplain as mapped by FEMA, for example.
- f. The final rule defines significant nexus as meaning that a water, including wetlands, either alone or in combination with other similarly situated waters in the region, significantly affects the chemical, physical, or biological integrity of a traditional navigable water (TNW), interstate water, or the territorial seas. For an effect to be significant, it must be more than speculative or insubstantial. Under the final rule, functions relevant to the significant nexus evaluation are sediment trapping; nutrient recycling; pollutant trapping, transformation, filtering, and transport; retention and attenuation of flood waters; runoff storage; contribution of flow; export of organic matter; and provision of life cycle-dependent aquatic habitat for a species located in a traditional navigable water, interstate water, or the territorial seas. An example of a significant nexus is where a water provides spawning habitat for salmon, which then swim downstream to become part of the ocean's biological integrity such that the water has a more than speculative or insubstantial effect on the ocean's biological integrity. An example of absence of significant nexus is where a water contributes flow directly or through another water to a TNW but does not have any effect on the chemical, physical, or biological integrity of the TNW.

2. What type of technical and financial assistance will you be providing to farmers and state enforcement agencies to ensure seamless implementation of this rule? Additionally, what will the cost of compliance be for New York farmers?

Response: Under the final rule, the EPA and the Department of the Army (hereafter, the agencies) have been working to develop outreach materials for the agricultural community, public and state agencies, and other stakeholders.

The estimated compliance costs for Clean Water Act programs that would be affected by the proposed rule provisions were conducted on a national scale. We did not calculate the cost of compliance for each state. Refer to the Economic Analysis prepared by EPA for the final rule for additional information on estimated costs/benefits associated with the implementation of the final rule.

3. In comments submitted to EPA by the New York Farm Bureau regarding this proposed rule, they note "The rule defines a tributary as having the 'presence of a bed and banks and ordinary high water mark...which contributes flow, either directly or through another water' to a traditional navigable water (79 Fed. Reg. 22263). Despite this

definition, however, the agencies will not necessarily require that these features exist for a tributary designation, since on low gradients ‘the banks of a tributary may be very low or may even disappear at times’ and the Ordinary High Water Mark need only be indicated by changes in soil characteristics or the presence of litter or debris (79 Fed. Reg. 22202).” Does this type of definition equate to the need of a judgment call by the Federal government? Even if the physical features of a tributary disappear, could the EPA have the authority to issue a judgment call that the features of a tributary need not be present to declare certain lands to be jurisdictional waters?

Response: To provide additional clarity, and for ease of use to the public, the agencies included the Corps’ existing definition of ordinary high water mark (OHWM) in EPA’s regulations. Long-standing Corps regulations define OHWM as the line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the banks, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas. 33 CFR 328.3(c)(6). That definition is not changed by the rule.

- 4. In its comments, the New York Farm Bureau also shares the concern that “Farmers wishing to ensure compliance with the Clean Water Act will be forced to seek individual determinations for a host of low spots, ditches, seasonal drainages, and isolated wetlands,” but that no additional staff or resources are planned for the agencies with a shared responsibility to makes these determinations, and there is already a significant delay in normal conservation determinations in parts of New York State. How long should a farmer expect to wait for an individual determination on planned farm activities? Can the EPA provide a time limit under which determinations will be made?**

Response: With this rulemaking, the agencies’ goal was to improve predictability and consistency which will improve the process for making jurisdictional determinations by minimizing delays and cost. All agricultural exemptions from Clean Water Act requirements that have existed for nearly 40 years are not affected by the rule. Also unchanged are current statutory and regulatory exemptions from permitting requirements. The CWA excludes agricultural stormwater discharges and return flows from irrigated agriculture from being regulated as a point source under any of the Act’s permitting programs. Further, the rule would not change the current exclusions for waste treatment systems and prior converted cropland (PCC). The final rule maintains these exclusions.

QUESTIONS FOR THE RECORD

Congresswoman Barbara Comstock (R-VA)
U.S. House Committee on Transportation and Infrastructure

Impacts of the Proposed Waters of the United States Rule on State and Local Government
February 4, 2015

Questions for EPA Administrator McCarthy

- 1. Under the recent proposed rule, landowners with properties containing newly jurisdictional waters will experience a decrease in property value. Has EPA considered how the rule will affect property values?**

Response: The rule does not impose any direct costs, including direct costs on property values.

- 2. How will the proposed regulation affect other Clean Water Act programs besides Section 404? Will EPA revise its economic analysis to include the impacts on other Clean Water Act programs such as Section 402 (NPDES, stormwater)?**

Response: The EPA did consider costs to other Clean Water Act programs in its economic analysis, and did not limit its analysis to Section 404. The EPA considered costs regarding compliance with Clean Water Act Sections 404 and 401, Section 402, Sections 303 and 305, and Section 311. The agencies welcomed public comment on this analysis during the public comment period, which ended on November 14, 2014. The EPA issued a revised economics analysis with the final rule, which again included an assessment for all programs of the CWA based on the analysis under the Section 404 program. The final economic analysis was released with the final rule on May 27, 2015.



THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

JUN 29 2015

The Honorable Bill Shuster
Chairman
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

I am pleased to support the charter of the Chemical Safety Advisory Committee in accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2. The Chemical Safety Advisory Committee is in the public interest and supports the U.S. Environmental Protection Agency in performing its duties and responsibilities.

I am filing the enclosed charter with the Library of Congress. The Chemical Safety Advisory Committee will be in effect for two years from the date it is filed with Congress. After two years, the charter may be renewed as authorized in accordance with Section 14 of FACA (5 U.S.C. App. 2 § 14).

If you have any questions or require additional information, please contact me or your staff may contact Christina Moody in EPA's Office of Congressional and Intergovernmental Relations at moody.christina@epa.gov or (202) 564-0260.

Sincerely,

A handwritten signature in black ink, which appears to read "Gina McCarthy", is written over a horizontal line.

Gina McCarthy

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 11 2015

THE ADMINISTRATOR

The Honorable Bill Shuster
Chairman
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

I am pleased to support the charter of the Local Government Advisory Committee in accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2. The Local Government Advisory Committee is in the public interest and supports the U.S. Environmental Protection Agency in performing its duties and responsibilities.

I am filing the enclosed charter with the Library of Congress. The Local Government Advisory Committee will be in effect for two years from the date it is filed with Congress. After two years, the charter may be renewed as authorized in accordance with Section 14 of FACA (5 U.S.C. App. 2 § 14).

If you have any questions or require additional information, please contact me or your staff may contact Christina Moody in EPA's Office of Congressional and Intergovernmental Relations at moody.christina@epa.gov or (202) 564-0260.

Sincerely,

A handwritten signature in black ink, appearing to read "Gina McCarthy".

Gina McCarthy

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY CHARTER

LOCAL GOVERNMENT ADVISORY COMMITTEE

1. **Committee's Official Designation (Title):**

Local Government Advisory Committee

2. **Authority:**

This charter renews the Local Government Advisory Committee (LGAC) in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2. The LGAC is in the public interest and supports the EPA in performing its duties and responsibilities under federal environmental statutes.

3. **Objectives and Scope of Activities:**

Federal environmental statutes provide for the delegation of programs to state and local governments. The states and local governments are ultimately responsible for the implementation of many public health and environmental programs that ensure that citizens have clean air and water, safe drinking water, and environmentally sound waste disposal. The LGAC is an independent, policy-oriented advisory committee. To assist the agency in ensuring that its regulations, policies, guidance, and technical assistance improve the capacity of local governments to carry-out these programs, the LGAC provides policy advice and recommendations to the EPA on:

- a. Changes needed to allow flexibility and innovation and to accommodate local needs without compromising environmental performance, accountability, or fairness;
- b. Ways to improve performance measurement and speed dissemination of new environmental protection techniques and technologies among local governments;
- c. Ways in which the EPA and states can help local governments strengthen their capacity to promote environmental quality, including public access, community right-to-know, and performance measurement;
- d. Projects to help local governments deal with the challenge of financing environmental protection infrastructure; and,

- e. EPA's policies, procedures, and practices regarding local government (development, implementation, and evaluation) including how those policies, procedures and practices further the Administrator's priorities regarding environmental justice, climate change and sustainability, among others.

4. **Description of Committees Duties:**

The duties of LGAC are solely to provide independent policy advice to the EPA Administrator.

5. **Official(s) to Whom the Committee Reports:**

The LGAC will submit advice and recommendations, and report to the EPA Administrator, through the Office of Congressional and Intergovernmental Relations.

6. **Agency Responsible for Providing the Necessary Support:**

The EPA will be responsible for financial and administrative support. Within the EPA, this support will be provided by the Office of Congressional and Intergovernmental Relations, Office of the Administrator.

7. **Estimated Annual Operating Costs and Work Years:**

The estimated annual operating cost of the LGAC is \$450,000 which includes 3.0 person-years of support.

8. **Designated Federal Officer:**

A full-time or permanent part-time employee of the EPA will be appointed as the Designated Federal Officer (DFO). The DFO or a designee will be present at all meetings of the advisory committee and subcommittee. Each meeting will be conducted in accordance with an agenda approved in advance by the DFO. The DFO is authorized to adjourn any meeting when he or she determines it is in the public interest to do so and will chair meetings when directed to do so by the official to whom the committee reports.

9. **Estimated Number and Frequency of Meetings:**

The LGAC expects to meet in person or by teleconference approximately four (4) to six (6) times a year. Meetings may occur approximately once every three (3) months or as

needed and approved by the DFO. The EPA may pay travel and per diem expenses when determined necessary and appropriate.

As required by the FACA, the LGAC will hold open meetings unless the EPA Administrator determines that a meeting or a portion of a meeting may be closed to the public in accordance with 5 U.S.C. 552b(c). Interested persons may attend meetings, appear before the committee as time permits, and file comments with the LGAC.

10. Duration and Termination:

The LGAC will be examined annually and will exist until the EPA Administrator determines the committee is no longer needed. This charter will be in effect for two years from the date it is filed with Congress. After this two-year period, the charter may be renewed as authorized in accordance with Section 14 of the FACA.

11. Member Composition:

The LGAC will be composed of approximately thirty (30) current elected and appointed local, state and tribal government officials. Members will serve as Representative members of non-Federal interests. In selecting members, the EPA will consider candidates who are currently elected or appointed officials representing: States, counties, cities, and other local governments, small communities, and tribal governments. The EPA will consider candidates such as mayors, city council members, county commissioners and executives, city managers, small town officials, public works, public health and environmental directors, tribal government leaders, and state officials including legislators and environmental and agricultural directors.

12. Subgroups:

The EPA, or the LGAC with the EPA's approval, may form subcommittees or workgroups for any purpose consistent with this charter. Such subcommittees or workgroups may not work independently of the committee and must report their recommendations and advice to the chartered LGAC for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered committee nor can they report directly to the EPA.

13. Recordkeeping:

The records of the committee, formally and informally established subcommittees, or other subgroups of the committee, will be handled in accordance with General Records Schedule 6.2 and EPA Records Schedule 181 or other approved agency records

disposition schedule. Subject to the Freedom of Information Act, 5 U.S.C. 552, these records will be available for public inspection and copying, in accordance with the Federal Advisory Committee Act.

November 20, 2015

Agency Approval Date

December 1, 2015

GSA Consultation Date

December 11, 2015

Date Filed with Congress



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR 24 2015

OFFICE OF
CIVIL RIGHTS

The Honorable Bill Shuster
Chairman, Committee on Transportation and Infrastructure
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I am pleased to send you the enclosed copy of the U.S. Environmental Protection Agency's (EPA) Fiscal Year 2014 annual report prepared in accordance with Section 203 of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act), Public Law 107-174.

This report provides information regarding the number of cases arising under the respective areas of law cited in the No FEAR Act where discrimination was alleged; the amount of money required to be reimbursed by the EPA to the Judgment Fund in connection with such cases; the number of employees disciplined for discrimination, retaliation, harassment or any other infractions of any provision of law referred to under the Act; an analysis of trends and knowledge gained; and accomplishments.

An identical letter has been sent to each entity designated to receive this report as listed in Section 203 of the No FEAR Act. The U.S. Attorney General, the Chair of the U.S. Equal Employment Opportunity Commission, and the Director of the U.S. Office of Personnel Management will also be sent a copy of the report.

If you have any questions, please contact me, or your staff may contact Thea J. Williams in the EPA's Office of Congressional and Intergovernmental Relations at williams.thea@epa.gov or (202) 564-2064.

Sincerely,

A handwritten signature in blue ink, which appears to read "Velveta Golightly-Howell", is positioned above the printed name.

Velveta Golightly-Howell
Director

Enclosure



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

SEP 3 2015

The Honorable Bill Shuster
Member, U.S. House of Representatives
310 Penn Street, Suite 200
Penn Street Center
Hollidaysburg, Pennsylvania 16648

Dear Representative Shuster:

Thank you for your May 6, 2015 letter to the U.S. Environmental Protection Agency (EPA) on behalf of your constituent, Ms. (b) (6) concerning manure management, proper burial of cows, and possible drinking water contamination by two farms adjacent to her property in Claysburg, Pennsylvania.

EPA delegates authority for the regulation of large farms to the Pennsylvania Department of Environmental Protection (PADEP). Concentrated animal feeding operations (CAFOs) require coverage under a National Pollutant Discharge Elimination System (NPDES) permit. EPA does not require small farms such as the ones adjacent to Ms. Cottle's property to apply for NPDES permit coverage. However, the Commonwealth of Pennsylvania's regulations require all farming operations that land apply manure or agricultural process wastewater, whether they generate the manure or import it from another operation, to have a written manure management plan. For farms not defined as CAFOs, manure management plans can be prepared by the farmer. Manure management plans do not have to be submitted for approval but must be kept on the farm and made available upon request.

With regard to the burial of cows as a means to manage animal mortalities at farms, burial is a legal disposal method in Pennsylvania as defined in the Commonwealth's Domestic Animal Act. Burial has the greatest number of environmental, public health and safety considerations. Burial sites need to be chosen carefully to prevent groundwater and well water contamination. Adequate cover prevents wild animals, dogs or birds from exhuming the carcasses. By Commonwealth law, burial sites must be: located outside of the 100-year flood plain; a minimum of 100 feet from waters of the Commonwealth (streams, ponds, wetlands, etc.) (200 feet is recommended); covered with minimum two feet of soil within 48 hours; and located a minimum of 100 feet from wells and sinkholes (200 feet recommended); at least 100 feet from property lines (200 feet recommended); and, away from public view.

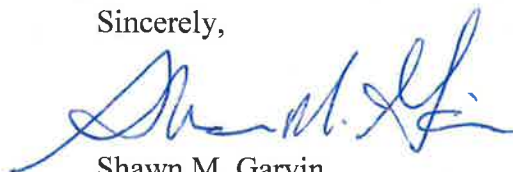


Private homeowner drinking water wells are not regulated by the EPA. EPA's regulations only apply to public water systems. A public water system is defined as a system that has at least 15 service connections or regularly serves at least 25 individuals. PADEP also does not regulate private wells. Private well owners have primary responsibility for the safety of the water drawn from their wells. They may contact their county health department to obtain information on how to have a well tested for total coliform bacteria and E. coli contamination. If the well tests positive, boil water intended for consumption at a rolling boil for at least one minute and disinfect the well according to procedures recommended by the PA Department of Health. Make sure to monitor your water periodically after disinfection. If the contamination is a recurring problem, they may want to install a permanent point-of-entry disinfection unit, which can use either chlorine, ultraviolet (UV light) or ozone. All of these methods act to kill or inactivate E. coli. More information on private wells can be located at the following websites: <http://water.epa.gov/drink/info/well/faq.cfm> and <http://extension.psu.edu/natural-resources/water/mwon>. A common source of bacteriological contamination of drinking water is on-site septic systems. If they have a septic system, concerned homeowners may want to have their system inspected by a qualified professional.

EPA contacted PADEP to inquire about any investigations they may have undertaken at the farms in question to determine compliance with applicable Commonwealth laws. PADEP initially received the complaint on June 14, 2015, investigated it with the Bedford County Conservation District (BCCD), and did not document any immediate water quality concerns. PADEP believes the farm of most interest is one immediately next door to Ms. Cottle. The operators of that farm are reportedly working with the BCCD to obtain the required manure management plan, so PADEP closed out the complaint.

If you have any questions, please do not hesitate to contact me or have your staff contact Mrs. Kinshasa Brown-Perry, EPA's Pennsylvania Liaison at 215-814-5404.

Sincerely,

A handwritten signature in blue ink, appearing to read "Shawn M. Garvin".

Shawn M. Garvin
Regional Administrator

cc: Steve Taglang, PADEP



THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

AUG 28 2015

The Honorable Bill Shuster
Chairman
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

I am pleased to file the enclosed amended charter for the Human Studies Review Board in accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2. The minor amendment changes the number of members from approximately 15 to approximately 10.

If you have any questions or require additional information, please contact me or your staff may contact Christina Moody in EPA's Office of Congressional and Intergovernmental Relations at moody.christina@epa.gov or (202) 564-0260.

Sincerely,

A handwritten signature in black ink, appearing to read "Gina McCarthy", is positioned above the printed name.

Gina McCarthy

Enclosure



THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

AUG 28 2015

The Honorable Bill Shuster
Chairman
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

I am pleased to file the enclosed charter establishing the Hazardous Waste Electronic Manifest System Advisory Board in accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2. The Hazardous Waste Electronic Manifest System Advisory Board is in the public interest and supports the U.S. Environmental Protection Agency in performing its duties and responsibilities.

I am filing the enclosed charter with the Library of Congress. The Hazardous Waste Electronic Manifest System Advisory Board will be in effect for two years from the date it is filed with Congress. After two years, the charter may be renewed as authorized in accordance with Section 14 of FACA (5 U.S.C. App. 2 § 14).

If you have any questions or require additional information, please contact me or your staff may contact Christina Moody in EPA's Office of Congressional and Intergovernmental Relations at moody.christina@epa.gov or (202) 564-0260.

Sincerely,

Gina McCarthy

Enclosure



THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

SEP 11 2015

The Honorable Bill Shuster
Chairman
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

I am pleased to support the charter of the Children's Health Protection Advisory Committee in accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2. The Children's Health Protection Advisory Committee is in the public interest and supports the U.S. Environmental Protection Agency in performing its duties and responsibilities.

I am filing the enclosed charter with the Library of Congress. The Children's Health Protection Advisory Committee will be in effect for two years from the date it is filed with Congress. After two years, the charter may be renewed as authorized in accordance with Section 14 of FACA (5 U.S.C. App. 2 § 14).

If you have any questions or require additional information, please contact me or your staff may contact Christina Moody in EPA's Office of Congressional and Intergovernmental Relations at moody.christina@epa.gov or (202) 564-0260.

Sincerely,

A handwritten signature in black ink, appearing to read "Gina McCarthy", is positioned above the printed name.

Gina McCarthy

Enclosure

QUESTIONS FOR THE RECORD
U.S. House Committee on Transportation and Infrastructure

Impacts of the Proposed Waters of the United States Rule on State and Local Government
February 4, 2015

Questions for EPA Administrator McCarthy

Note: The responses reflect information based on the issuance of the final rule, published in the *Federal Register* on June 29, 2015, not the draft rule in-place at the time the questions were initially posed. This will help ensure that there is no confusion, given changes made in the final rule based on the extensive input received and the length of time that has passed since the rule was finalized.

- 1. The proposed rule talks about regulating “waters.” How do you specifically define “water”? Is any wet area on land a potential “water” under the proposed rule? If not, please describe in detail what is, and is not, a “water.”**

Response: The EPA and the Department of the Army (hereafter, the agencies) have not defined “water” in a rule, though they do define the term “waters of the United States.” A wet area is not automatically considered a “water of the United States.” Only “waters of the United States” are regulated under the Clean Water Act.

- 2. We understand that EPA and the Corps received over 1 million comments from the public on the proposed rule, but the docket for the rule only includes approximately 19,400 “substantive” comments.**
 - a. Did the agencies receive any other substantive comments besides the approximately 19,400 comments in the docket?**

Response: All unique letters have been posted in the docket, which include both substantive and non-substantive comments. Multiple copies of mass mail-in campaigns are not posted to the docket, though the number of Americans providing the same comment are noted.

- b. Were the remaining 900,000-plus comments received considered “not” substantive? Were these nonsubstantive from mass mail-in campaigns? Please describe the nature of these other, nonsubstantive comments.**

Response: The only letters not posted to the public docket are duplicate copies of identical letters received as part of mass mail-in campaigns. All public comments, including examples of every mass mail-in campaign, are available online at regulations.gov.

- c. On February 26th, 2015, Administrator McCarthy told the House Appropriations Committee that 87 percent of the comments received were positive responses. Is that 87 percent of the 1 million comments received? Were**

most of the 900,000-plus comments that made up Administrator McCarthy's 87 percent statistic not separate or substantive comments, but were from mass mail-in campaigns?

Response: Yes, more than 87 percent of the more than one million comments received were supportive of policies in the proposed rule.

d. Of the approximately 19,400 "substantive" comments received, how many were positive? How many were opposed? How many were neutral?

Response: In the end, approximately 20,000 comments were determined to be unique and were, therefore, posted to the docket. Posting of unique comments is standard practice to allow efficient public access to all comments received.

- 3. EPA recently indicated that it is planning to finalize the rule during the Spring of 2015.**
- a. Are EPA and the Corps still planning to promulgate the rule in the Spring of 2015? If so, please explain specifically how the EPA and the Corps plan to review and take into consideration each of the 1 million comments that were received, prepare responses to all of the comments, and revise the rule based on the multitude of comments received, all within a period of a few months?**

Response: All comments received were reviewed and a response to comments document was completed. The final rule was signed on May 27, 2015, and published in the Federal Register on June 29, 2015.

b. Will the Agencies prepare a detailed response to the public comments? How will the EPA respond to each and every issue raised in each comment, or does the EPA plan to gloss over the issues in the response to public comment?

Response: All comments received were reviewed and a response to comments document was completed. The final response to comments document was posted on June 24, 2015.

- 4. In developing its proposed rule, the Agencies failed to conduct outreach to state and local governments. The lack of appropriate consultation was pointed out in comments filed by many state and local officials, plus organizations representing state and local governments. If EPA and the Corps worked with states to develop the proposed rule as they claim, why did the majority of states write comments opposing the rule as proposed and asking the Agencies to withdraw or substantially revise the rule?**

Response: EPA and the Corps conducted significant outreach on the proposed rule, including to state and local governments.

As part of the agencies' consultation process, the EPA held three in-person meetings and two phone calls in the fall and winter of 2011, to coordinate with state organizations prior to beginning formal rulemaking. EPA also worked closely with states and municipalities after the

rule was proposed. Organizations involved include the National Governors Association, the National Conference of State Legislatures, the Council of State Governments, the National Association of Counties, the National League of Cities, the U.S. Conference of Mayors, the County Executives of America, the National Associations of Towns and Townships, the International City/County Management Association, and the Environmental Council of the States (ECOS). In addition, the National Association of Clean Water Agencies (NACWA) and the Association of Clean Water Administrators (ACWA) were invited to participate. As part of the consultation, 12 counties, eight associations and various state agencies and offices from five states (Alaska, Wyoming, Kansas, Tennessee, and Texas) submitted written comments. In addition, the EPA held numerous outreach calls with state and local government agencies seeking their technical input. More than 400 people from a variety of state and local agencies and associations, including the Western Governors' Association, the Western States Water Council and the Association of State Wetland Managers participated in various calls and meetings. The agencies' engagement with states continued through a series of conference calls organized by both ACWA and ECOS.

During the public comment period, the agencies met with stakeholders across the country to facilitate their input on the proposed rule. We talked with a broad range of interested groups including farmers, businesses, states and local governments, water users, energy companies, coal and mineral mining groups, and conservation interests. In October 2014, the EPA conducted a second small business roundtable to facilitate input from the small business community, which featured more than 20 participants that included small government jurisdictions as well as construction and development, agricultural, and mining interests. After releasing the proposal in March, the EPA and the Army conducted unprecedented outreach to a wide range of stakeholders, holding over 400 meetings all across the country to offer information, listen to concerns, and answer questions.

In addition, the EPA asked the EPA's Local Government Advisory Committee's Protecting America's Waters Workgroup for advice and recommendations on the proposed rule. The LGAC Protecting America's Waters Workgroup held a series of public meetings to hear from local elected and appointed officials at several geographic field locations. The workgroup meetings provided an opportunity for the workgroup to hear from local officials on local issues of concern related to the proposed rule. State, local, and tribal officials were invited to attend these open meetings. The Local Government Advisory Committee is a formal advisory committee chartered under the Federal Advisory Committee Act and is composed primarily of local, state, and tribal elected and appointed officials from around the country. The LGAC sent their final recommendations to the Administrator on November 5, 2014, which the agencies carefully considered as they developed the final rule.

These actions exemplify the agencies' commitment to provide a transparent and effective opportunity for all interested Americans to participate in the rulemaking process.

5. EPA has said it has done extensive outreach to stakeholders during the comment period, and has conducted some 400 stakeholder meetings around the country.

- a. Please identify each of the stakeholder meetings that was held, including the data and location where each was held.**

- b. Provide a complete list of all Federal agency (EPA, Corps, and any other agencies) and Federal contractor participants at each stakeholder meeting.**
- c. Identify all of the stakeholders who participated at each stakeholder meeting.**
- d. Provide all handouts and other.**

Response: After releasing the proposed rule in March 2014, the EPA and the Army conducted unprecedented outreach to a wide range of stakeholders, holding over 400 meetings all across the country to offer information, listen to concerns, and answer questions. To promote transparency, a list of the outreach meetings that were held is posted in the public docket.¹ Where available, this list includes the location of the meeting, groups represented, topics discussed, and materials provided. Individual attendees were not recorded.

- 6. The Small Business Administration's Office of Advocacy (SBA) recently concluded that EPA and the Corps have improperly certified the proposed rule under the Regulatory Flexibility Act because it would have direct, significant effects on small entities, and recommended that the Agencies withdraw the rule and that the EPA conduct a Small Business Advocacy Review panel before proceeding any further with this rulemaking. Furthermore, the Small Business Administration along with many governmental and private stakeholders, concluded that EPA and the Corps conducted a flawed economic analysis of the proposed rule. The analysis ignored the impact of the rule on CWA's regulatory programs and did not adequately evaluate impacts of the proposed rule.**
 - a. What is EPA's response to the SBA Office of Advocacy's comments on the proposed rule?**

Response: The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis for any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. As part of the Waters of the U.S. rulemaking, the EPA certified that the proposed rule will not have a significant economic impact on a substantial number of small entities.

The RFA applies to significant, disproportionate adverse economic impacts on small entities subject to the rule; the primary purpose of the initial regulatory flexibility analysis is to identify and address regulatory alternatives which minimize any significant economic impact of the rule on small entities. 5 U.S.C. 603. Because this rule sought only to clarify the existing scope of the Clean Water Act, this action will not adversely affect small entities to a greater degree than the existing regulations. The agencies' proposed rule is not designed to subject any entities of any size to any

¹ A list of meetings conducted at the headquarters level is available at <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OW-2011-0880-13183>. A list of meetings conducted at the regional level is available at <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OW-2011-0880-13182>.

specific regulatory burden. *Cement Kiln Recycling Coalition v. EPA*, 255 F.3d 855 (D.C. Cir. 2001). Rather, it is designed to clarify the scope of the waters of the United States, consistent with U.S. Supreme Court precedent. Following publication of the final rule, the Government Accountability Office conducted an independent evaluation of the Agencies' compliance with the Administrative Procedure Act and other rulemaking requirements, and concluded that the Agencies had successfully satisfied them, including the Regulatory Flexibility Act.

b. Why wasn't a Small Business Advocacy Review panel held? Will you commit to re-examining the impacts of the proposed rule on small entities and conducting a Small Business Advocacy Review panel before proceeding any further with this rulemaking?

Response: For the reasons described above, a panel was not convened. At the same time, the agencies recognize the substantial interest in this issue by small governmental jurisdictions and other small-entity stakeholders. In light of this interest, the EPA and the Corps sought early and wide input from representatives of small entities while formulating a proposed rule. This process enabled the agencies to hear directly from these representatives, at an early stage, about how they should approach this complex question of statutory interpretation, together with related issues that such representatives of small entities identified for possible consideration in separate proceedings.

The EPA has also prepared a report summarizing its small entity outreach, the results of this outreach, and how these results informed the development of this proposed rule. This report is publicly available in the docket for the rule. On October 15, 2014, the agencies hosted a second roundtable to facilitate input from small entities. A summary of this roundtable is also available in the docket for the rule. As indicated above, following publication of the final rule, the U.S. Government Accountability Office conducted an independent evaluation of the Agencies compliance with the Administrative Procedure Act and other rulemaking requirements, and concluded that the Agencies had successfully satisfied them, including the Regulatory Flexibility Act.

c. Will you commit to conducting a new economic impacts analysis of the proposed rule, taking into account and specifically addressing the concerns stated by SBA and the stakeholders, before proceeding any further with this rulemaking?

Response: An updated economic analysis was completed for the final rule. This analysis includes estimated indirect costs and benefits associated with the rule requirements, including effects to Clean Water Act programs. EPA reviewed and considered all comments on the economic analysis in developing the final analysis document. The final economic analysis was released with the final rule on May 27, 2015.

7. EPA and the Corps state that this rule is not an expansion of jurisdiction, that it is only a clarification. What exactly will the rule clarify? Specifically what waters are in and what waters are outside of Federal jurisdiction under this rule? Will the Agencies add clarity and specificity to the final rule text, or will the Agencies keep the final rule text

general and add discussion to the preamble of the final rule or to supplemental “guidance?”

Response: The final rule clarifies which waters are within and which are outside the scope of federal jurisdiction under the Clean Water Act. This clarity is provided in rule text, by listing features that are not jurisdictional, and in discussion of the preamble to the final rule.

The most substantial change was the deletion of the existing regulatory provision that defined waters of the United States “as including all other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce including any such waters: (i) Which are or could be used by interstate or foreign travelers for recreational or other purposes; (ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or (iii) which are used or could be used for industrial purposes by industries in interstate commerce.” 33 CFR 328.3(a)(3); 40 CFR 122.2. Under the final rule, these “other waters” (those which do not fit within the categories of waters jurisdictional by rule) would only be jurisdictional upon a case-specific determination that they have a significant nexus to traditional navigable waters, interstate waters, or the territorial seas.

Additionally, the final rule specifically excludes groundwater from regulation and lists a number of other exclusions previously only discussed in preamble language. The exclusions will apply to waters regardless of whether they might otherwise be considered jurisdictional under paragraphs (a)(4)-(a)(8) of the rule. Also, for the first time, under the rule the agencies determined to exclude by rule certain ditches that have intermittent or ephemeral flow, and to exclude ditches that are not tributaries to traditional navigable waters, interstate waters, or the territorial seas, regardless of their flow regime. These excluded ditches cannot be “recaptured” under any of the jurisdictional categories of “waters of the U.S.” under the proposed rule except under paragraphs (a)(1)-(a)(3). The final rule excludes ditches with ephemeral flow that are not a relocated tributary or excavated in a tributary, and ditches with intermittent flow that are not a relocated tributary, or excavated in a tributary, or drain wetlands.

8. The Agencies have been trying to create the impression that ditches are not regulated.

a. Describe specifically in which circumstances what ditches are considered jurisdictional under the rule and what ditches are not jurisdictional.

Response: The final rule excludes ditches with ephemeral flow that are not a relocated tributary or excavated in a tributary, and ditches with intermittent flow that are not a relocated tributary, or excavated in a tributary, or drain wetlands. The final rule also excludes ditches that do not flow directly or indirectly into a traditional navigable water, an interstate water, or the territorial seas. Ditches may be jurisdictional if they meet paragraphs (a)(1)-(a)(3). Ditches may also be jurisdictional if they are not excluded and meet the definition of “tributary.”

b. Describe specifically in which circumstances what ditches are considered a tributary under the rule and what ditches are not a tributary.

Response: The final rule excludes ditches with ephemeral flow that are not a relocated tributary or excavated in a tributary, and ditches with intermittent flow that are not a relocated tributary, or excavated in a tributary, or drain wetlands. The final rule also excludes ditches that do not flow directly or indirectly into a traditional navigable water, an interstate water, or the territorial seas. Ditches with perennial flow and that otherwise meet the definition of tributary as described in the final rule and preamble are covered by the regulations.

c. If a ditch is determined to be jurisdictional, will the ditch be subject to water quality standards? Total Maximum Daily Loads (TMDLs)?

Response: States typically develop water quality standards for general categories of waters, which have been and are inclusive of the types of waters that have been jurisdictional. This rule does not change the requirements for state water quality standards to be consistent with the Clean Water Act (e.g., designated uses, criteria to protect those uses, antidegradation policies). If a state determines water quality standards need to be developed for specific types of waters, that need would exist with or without this rule.

States are required to list waters that are impaired, but have discretion to prioritize this list for TMDL development, which may proceed over a period of several years under existing EPA policy. Monitoring, assessment, and TMDL development tend to occur in water segments where the agencies assert jurisdiction under current practices.

9. In determining whether a ditch is jurisdictional, how will connection be determined? Will it be through the physical ditch structure which directly (or indirectly) connects to a “water of the U.S.”?

Response: A ditch must meet the definition of a tributary in the final rule, and not be otherwise excluded, to be determined jurisdictional. A ditch can also be jurisdictional if it meets the paragraphs (a)(1)-(a)(3).

a. Is there a limit to connectivity? Can a ditch that is physically connected to another ditch (for example, via a pipe, or other infrastructure, or convergence) that ultimately leads to a “water of the U.S.” be considered jurisdictional even if it is hundreds of miles away and doesn’t have a relatively permanent flow of water?

Response: A ditch is jurisdictional where it meets the definition of a tributary including both physical characteristics and is not otherwise excluded. A ditch can also be jurisdictional if it meets paragraphs (a)(1)-(a)(3) of the rule.

10. This proposal references “ephemerals.” What is the definition of an “ephemeral” feature? Can a feature be “ephemeral” and not be a stream or tributary and not be jurisdictional? Please explain.

Response: The agencies did not define the term “ephemeral” in the rule.

A feature can be “ephemeral” and not meet the agencies’ regulatory definition of tributary and, therefore, not be jurisdictional. A tributary, as defined in the final rule, must have a bed and banks and an ordinary high water mark, and contribute flow either directly or through other waters to a traditional navigable water, interstate water, or the territorial seas, to be jurisdictional. Where an ephemeral feature does not meet the definition of a tributary that feature would not be jurisdictional as a tributary. The agencies added a specific exclusion for such ephemeral features in the final rule.

11. How will intermittent, ephemeral, and seasonal tributaries be regulated under the proposed rule?

Response: A tributary must have bed and banks and an ordinary high water mark, and contribute flow either directly or through other waters to a traditional navigable water, interstate water, or the territorial seas, to be jurisdictional. An intermittent or ephemeral stream that meets this definition would be jurisdictional.

12. The proposed rule includes an exclusion for ditches that are excavated in uplands and drain only uplands if they do not have water year round. But the rule does not define the term “uplands.” How will uplands be defined? Does it mean that land that is not a wetland?

Response: The term “upland” has been used by the agencies for decades in longstanding practice to mean areas that are not a wetland (as defined in Clean Water Act implementing agency regulations) or other waterbody. The final rule eliminated the use of the word “uplands,” and provides a clearer statement of the types of ditches that are subject to exclusion.

13. EPA states that the exemption for maintenance of drainage ditches will continue, as this exemption is automatic, and that state and local agencies responsible for maintaining ditches do not have to apply for this exclusion. However, even under current rules, it is unclear whether and to what extent the maintenance exemption is allowed for ditches. For example, in some districts, agencies must apply for the exemption while others state the conditions for maintenance activities are too narrow to qualify. Other agencies have been told to discontinue their maintenance activities they believed were previously exempt. Agencies have been told they need to provide the original documents that show the scope, measurements, etc., of these ditches but since many of them may have been dug decades ago, the documentation does not exist.

- a. Please explain specifically how the ditch maintenance exemption will be implemented under the new rule. Will the rule specifically state that all ditch maintenance activities are exempt and do not need prior approval?**

Response: The ditch maintenance exemption is created in the Clean Water Act itself, and further discussed in agency regulations (33 C.F.R. 320-330, 40 C.F.R. Part 232) and in agency guidance letters. The rule defines waters of the U.S. and does not in any way change or address the ditch maintenance exemption or its implementation.

- b. If a state or local agency is conducting routine maintenance activities on the ditch that is near or adjacent to wetland areas, would that make the ditch jurisdictional?**

Response: No, the activities performed on or in the ditch would not make the ditch jurisdictional. Determinations of jurisdiction are based on the characteristics of the ditch and whether the ditch meets the definition of a tributary.□

- 14. Will municipal storm sewer systems, water recycling and reuse, stormwater treatment, and other water treatment related facilities be exempt from jurisdiction under the Clean Water Act under the proposed rule? Or will water recycling supply ponds, constructed wetlands, and other treatment components of this infrastructure jurisdictional and subject to Clean Water Act regulation?**

Response: The final rule expressly excludes stormwater control features created in dry land, detention and retention basins constructed in dry land used for wastewater recycling, as well as groundwater recharge basins and percolation ponds built for wastewater recycling.

- 15. The EPA has said that municipal separate storm sewer systems (MS4s) will not be regulated as “waters of the U.S.” However, EPA also has indicated that there could be a “water of the U.S.” within an MS4 system.**
- a. Please explain what stormwater management facilities are specifically exempt under the proposed rule? What types of facilities are or could be considered jurisdictional waters? Please provide several examples where a “water of the U.S.” might be found within an MS4?**
 - b. Please explain in detail where an MS4 ends and a “water of the U.S.” begins? Can a feature be both an MS4 and a water of the U.S.?**
 - c. If an MS4 is determined to be a “water of the U.S.,” how will that impact the ability to utilize that facility for water quality (e.g., stormwater) treatment? Will water quality standards be applied to such facilities?**

Response: The Army and EPA did not change the jurisdictional status of various components of stormwater systems and drainage networks in the rule. During the public comment period, the agencies received many comments from representatives of cities, counties, and other entities concerned about how the proposed rule may affect stormwater systems. The agencies clarified their policy in the final rule by adding a new exclusion in paragraph (b)(6) for stormwater control features constructed to convey, treat, or store stormwater that are created in dry land.

The EPA considers MS4s to be systems and, in terms of jurisdiction, MS4s should be thought of as component parts and not a singular entity. As was true historically, MS4s can include jurisdictional and non-jurisdictional features. If needed, the jurisdictional status of such components could be evaluated. Implementation of the Clean Water Rule will not alter the manner in which MS4 systems currently operate and are approved under the CWA.

16. What specifically is considered a floodplain and a riparian area under the rule?

Response: The agencies specifically requested comments on the proposed definitions and approaches, to consider options for addressing them in the final rule. As a result, the final rule did not include riparian areas and clarified the term floodplain by making clear that the rule relies on the boundary of the 100-year floodplain or 1500 feet from the Ordinary High Water Mark of a tributary, whichever is less.

QUESTIONS FOR THE RECORD

Congressman Richard Hanna (R-NY)
U.S. House Committee on Transportation and Infrastructure

Impacts of the Proposed Waters of the United States Rule on State and Local Government
February 4, 2015

Questions for EPA Administrator McCarthy

- 1. What support will EPA give in the permitting and implementation process to state environmental agencies currently responsible for enforcing water regulations?**

Response: Now that the rule is final, the EPA and the Department of the Army (hereafter, the agencies) are working to develop outreach materials for the public and state agencies to make it as clear as possible which waters are jurisdictional and which are not. In addition, the agencies have been conducting webinars with state agencies and public stakeholders to help them to better understand the rule.

- 2. How has EPA ensured that states will interpret and implement ambiguously defined provisions in the same way?**

Response: With this rulemaking, the goal is to improve predictability and consistency, which will improve the process for making jurisdictional determinations by minimizing delays and cost. The final rule provides clearer categories of waters that are jurisdictional, as well as a clearer list of the waters and features that are not jurisdictional.

Now that the rule is final, the agencies are developing outreach materials for the public and state agencies to make it as clear as possible which waters are jurisdictional and which are not. In addition the webinars mentioned above, both the preamble to the rule and the response to comments documents include greater discussion on the content of the rule, providing additional clarification.

- 3. A farmer purchased property 25 years ago that was in pasture land when he purchased it. The pasture routinely has wet spots during extremely wet years, and water typically dots the landscape and meanders across the floodplain into a drainage way which experiences seasonal flows occasionally. Drainage flows to a classified water body subject to federal jurisdiction. The farmer maintains a variety of fences for his cattle, including cattle crossings, and periodically fertilizes the entire pasture system. Cultivation of this area occurs under a five year rotation. The farm is conscious of the navigable waters that lie in close proximity to his farm.**

Under the proposed WOTUS rule:

- a. At what point in the floodplain does “upland” drainage become jurisdictional water of the U.S.?”**

Response: Unconfined upland drainage such as sheetflow is not a regulated water, regardless of whether or not it is in the floodplain. In addition, waters in a floodplain associated with normal farming, ranching, or forestry areas are excluded from the definition of adjacent under the rule. As a result, the only circumstances that upland drainage may be regulated is when the drainageway meets the definition of tributary (i.e., has a bed and banks and Ordinary High Water Mark) and is not otherwise excluded or where it is determined to have a significant nexus□based on a case-specific evaluation.

b. Does fertilizing these pastures count as applying nutrients to a jurisdictional water of the U.S.?

Response: No.

c. Does installing fencing or shaping and grading wet areas through cultivation now count as activities regulated through Section 404 dredge and fill permitting?

Response: The final rule does not change the existing statutory exemptions for discharges of dredged and/or fill material into waters of the U.S. associated with normal farming, silviculture, and ranching activities, or any other exempt activity under Section 404(f)(1) of the CWA. Installing fences is not regulated. Cultivation□is exempted under Section 404(f)(1).

d. Who will make such jurisdictional calls?

Response: The Corps is the agency that conducts most of the day-to-day permitting and making jurisdictional determinations under Clean Water Act Section 404. A memorandum of agreement between EPA and the Corps describes the allocation of responsibilities between the EPA and the Corps to determine the geographic jurisdiction of the Section 404 program and the applicability of the exemptions under section 404(f) of the CWA.²

e. Given the close nature of Federal conservation standards and exemptions proposed from the CWA, where do non-participating farmers stand?

Response: The rule does not affect the activity exemptions set forth in the CWA. There is no requirement for a farmer, rancher, or forester to be a USDA-NRCS program participant to utilize these exemptions.

f. The EPA maintains that the list of exempted practices favors agriculture. If this is the case, why didn't EPA choose to pursue the relatively few practices that would require a permit?

Response: Section 404(f) of the CWA covers activity-based exemptions for farmers,

² Memorandum of Agreement Between the Department of the Army and the Environmental Protection Agency Concerning the Determination of the Section 404 Program and the Application of the Exemptions Under Section 404(F) of the Clean Water Act - <http://water.epa.gov/lawsregs/guidance/wetlands/404f.cfm>

ranchers, and foresters. Nothing in the rule affects these exemptions. The rule only clarifies the extent of waters that are and are not covered under the CWA. The rule does address the types of activities in waters of the United States that are regulated because they involve the discharge of a pollutant under CWA section 301.

QUESTIONS FOR THE RECORD

Congressman Sam Graves (R-MO)
U.S. House Committee on Transportation and Infrastructure

Impacts of the Proposed Waters of the United States Rule on State and Local Government
February 4, 2015

Questions for EPA Administrator McCarthy

- 1. The Environmental Protection Agency (EPA), Army Corps of Engineers, and the regulated utility industry rely on nationwide and general permits, under the Clean Water Act sections 402 and 404, to authorize certain projects in jurisdictional waters without the need for individual permits. These general permits have been an especially important tool for energy infrastructure projects, including transmission lines, as well as large solar and wind projects.**

Currently, in order to rely on nationwide permits, utilities are subject to a small acreage limitation of jurisdictional waters that will be affected by “single and complete” projects. In other words, a relevant nationwide permit is limited to a small, individual section of a project that may affect jurisdictional waters. General permits ensure that the project is not significantly harming navigable waters. However, under the proposed “waters of the United States” rule, most if not all ditches, dry washes, and other minor features that a project crosses would be considered a jurisdictional water. It appears the “waters of the United States” rule will make it more difficult to use nationwide permits by making it harder to qualify for them.

I have heard that the EPA doesn’t see it this way. Please explain how linear facilities will continue to be able to use nationwide permits for crossings when more geographic features will be considered as jurisdictional under the rule. Also, please explain how ditches designed to facilitate transmission line construction (or renewable project construction) would not come under current definitions, and how utilities would continue to be able to rely on nationwide and regional general permits as the utilities currently do, especially since these permits are administered by local Corps employees who have to interpret the rules.

Response: The final rule does not alter the Clean Water Act Section 404 permitting process administered by the U.S. Army Corps of Engineers and two authorized states. The final rule does not alter the Corps’ existing nationwide permits (NWPs) that currently streamline the permitting process for activities with minimal adverse effects on the aquatic environment. In general, the EPA and the Department of the Army (hereafter, the agencies) believe the rule may expedite the jurisdictional determination review process in the long-term for certain waters by clarifying jurisdictional matters that have been time-consuming and cumbersome for field staff and the regulated community in light of the 2001 and 2006 Supreme Court cases. The NWP for linear projects is not affected by the rule because the NWP considers each crossing separately – not cumulatively.

The Corps' NWP program authorizes Clean Water Act Section 404 and Rivers and Harbors Act Section 10 discharges that would have no more than minimal adverse effects on the aquatic environment for activities that qualify. For example, Nationwide Permit 3 (Maintenance), Nationwide Permit 12 (Utility Line Activities), and Nationwide Permit 14 (Linear Transportation Projects) may specifically apply to the circumstances described above. Some of these activities may be non-reporting while others may require notification to the Corps. The Corps can provide a permit applicant with additional information regarding which Nationwide Permit might apply to a particular activity. In addition, some Corps districts also have State Programmatic General Permits and Regional General Permits for emergency-type activities allowing for efficient permit decision-making.

Authorization under the CWA is not needed for activities which occur in non-jurisdictional waters/features.

QUESTIONS FOR THE RECORD
Congressman John Katko (R-NY)
U.S. House Committee on Transportation and Infrastructure

Impacts of the Proposed Waters of the United States Rule on State and Local Government
February 4, 2015

Questions for EPA Administrator McCarthy

1. Please provide illustrative examples of what does and does not constitute:

- a. A tributary.**
- b. An upland.**
- c. Adjacent waters.**
- d. Shallow subsurface hydrologic connections as “neighboring” waters.**
- e. A floodplain.**
- f. A significant nexus.**

Response:

- a.** This final rule defines tributaries as waters that are characterized by the presence of physical indicators of flow — bed and banks and ordinary high water mark — and that contribute flow directly or indirectly to a traditional navigable water, an interstate water, or the territorial seas. An example of what does constitute a tributary is a stream that has a bed, banks, and OHWM, and flows into the Hudson River. Examples of what are not tributaries include water features that flow infrequently enough that they do not have bed, banks, and/or an OHWM, and streams that do not connect to a traditional navigable water, interstate water, or the territorial seas.
- b.** The final rule does not define upland and has eliminated use of the term in the exclusions for ditches, in response to the questions created by use of the term in the proposal.
- c.** Under this final rule, adjacent means bordering, contiguous, or neighboring, including waters separated from other waters of the United States by constructed dikes or barriers, natural river berms, beach dunes and the like. Further, waters that connect segments of, or are at the head of, a stream or river are adjacent to that stream or river. Adjacent waters include wetlands, ponds, lakes, oxbows, impoundments, and similar water features. However, it is important to note that adjacent waters do not include waters that are subject to established normal farming, silviculture, and ranching activities under Section 404(f) of the CWA.
- d.** The final rule does not include a provision defining neighboring based on shallow subsurface flow, though such flow may be an important factor in evaluating a water on a case-specific basis under paragraphs (a)(7) and (a)(8) to determine if the water has a significant nexus to a traditional navigable water (TNW), interstate water, or territorial sea. In the evaluation of whether a water individually or in combination with other similarly situated waters has a significant nexus to a TNW, interstate water, or the territorial seas, a variety of factors will influence the chemical, physical,

or biological connections the water has with the downstream TNW, interstate water, or the territorial seas, including distance from a jurisdictional water, the presence of surface or shallow subsurface hydrologic connections, and density of waters of the same type.

- e. The final rule uses floodplain to mean a 100-year floodplain. The agencies intend to rely on FEMA maps wherever possible to identify the extent and location of the 100-yr floodplain. An example of an area that is not considered a floodplain are any areas outside the 100-yr floodplain as mapped by FEMA, for example.
- f. The final rule defines significant nexus as meaning that a water, including wetlands, either alone or in combination with other similarly situated waters in the region, significantly affects the chemical, physical, or biological integrity of a traditional navigable water (TNW), interstate water, or the territorial seas. For an effect to be significant, it must be more than speculative or insubstantial. Under the final rule, functions relevant to the significant nexus evaluation are sediment trapping; nutrient recycling; pollutant trapping, transformation, filtering, and transport; retention and attenuation of flood waters; runoff storage; contribution of flow; export of organic matter; and provision of life cycle-dependent aquatic habitat for a species located in a traditional navigable water, interstate water, or the territorial seas. An example of a significant nexus is where a water provides spawning habitat for salmon, which then swim downstream to become part of the ocean's biological integrity such that the water has a more than speculative or insubstantial effect on the ocean's biological integrity. An example of absence of significant nexus is where a water contributes flow directly or through another water to a TNW but does not have any effect on the chemical, physical, or biological integrity of the TNW.

2. What type of technical and financial assistance will you be providing to farmers and state enforcement agencies to ensure seamless implementation of this rule? Additionally, what will the cost of compliance be for New York farmers?

Response: Under the final rule, the EPA and the Department of the Army (hereafter, the agencies) have been working to develop outreach materials for the agricultural community, public and state agencies, and other stakeholders.

The estimated compliance costs for Clean Water Act programs that would be affected by the proposed rule provisions were conducted on a national scale. We did not calculate the cost of compliance for each state. Refer to the Economic Analysis prepared by EPA for the final rule for additional information on estimated costs/benefits associated with the implementation of the final rule.

3. In comments submitted to EPA by the New York Farm Bureau regarding this proposed rule, they note "The rule defines a tributary as having the 'presence of a bed and banks and ordinary high water mark...which contributes flow, either directly or through another water' to a traditional navigable water (79 Fed. Reg. 22263). Despite this

definition, however, the agencies will not necessarily require that these features exist for a tributary designation, since on low gradients ‘the banks of a tributary may be very low or may even disappear at times’ and the Ordinary High Water Mark need only be indicated by changes in soil characteristics or the presence of litter or debris (79 Fed. Reg. 22202).” Does this type of definition equate to the need of a judgment call by the Federal government? Even if the physical features of a tributary disappear, could the EPA have the authority to issue a judgment call that the features of a tributary need not be present to declare certain lands to be jurisdictional waters?

Response: To provide additional clarity, and for ease of use to the public, the agencies included the Corps’ existing definition of ordinary high water mark (OHWM) in EPA’s regulations. Long-standing Corps regulations define OHWM as the line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the banks, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas. 33 CFR 328.3(c)(6). That definition is not changed by the rule.

- 4. In its comments, the New York Farm Bureau also shares the concern that “Farmers wishing to ensure compliance with the Clean Water Act will be forced to seek individual determinations for a host of low spots, ditches, seasonal drainages, and isolated wetlands,” but that no additional staff or resources are planned for the agencies with a shared responsibility to makes these determinations, and there is already a significant delay in normal conservation determinations in parts of New York State. How long should a farmer expect to wait for an individual determination on planned farm activities? Can the EPA provide a time limit under which determinations will be made?**

Response: With this rulemaking, the agencies’ goal was to improve predictability and consistency which will improve the process for making jurisdictional determinations by minimizing delays and cost. All agricultural exemptions from Clean Water Act requirements that have existed for nearly 40 years are not affected by the rule. Also unchanged are current statutory and regulatory exemptions from permitting requirements. The CWA excludes agricultural stormwater discharges and return flows from irrigated agriculture from being regulated as a point source under any of the Act’s permitting programs. Further, the rule would not change the current exclusions for waste treatment systems and prior converted cropland (PCC). The final rule maintains these exclusions.

QUESTIONS FOR THE RECORD

Congresswoman Barbara Comstock (R-VA)
U.S. House Committee on Transportation and Infrastructure

Impacts of the Proposed Waters of the United States Rule on State and Local Government
February 4, 2015

Questions for EPA Administrator McCarthy

- 1. Under the recent proposed rule, landowners with properties containing newly jurisdictional waters will experience a decrease in property value. Has EPA considered how the rule will affect property values?**

Response: The rule does not impose any direct costs, including direct costs on property values.

- 2. How will the proposed regulation affect other Clean Water Act programs besides Section 404? Will EPA revise its economic analysis to include the impacts on other Clean Water Act programs such as Section 402 (NPDES, stormwater)?**

Response: The EPA did consider costs to other Clean Water Act programs in its economic analysis, and did not limit its analysis to Section 404. The EPA considered costs regarding compliance with Clean Water Act Sections 404 and 401, Section 402, Sections 303 and 305, and Section 311. The agencies welcomed public comment on this analysis during the public comment period, which ended on November 14, 2014. The EPA issued a revised economics analysis with the final rule, which again included an assessment for all programs of the CWA based on the analysis under the Section 404 program. The final economic analysis was released with the final rule on May 27, 2015.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 23 2015

THE ADMINISTRATOR

The Honorable Bill Shuster
Chairman
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

I am pleased to support the charter of the Pesticide Program Dialogue Committee in accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2. The Pesticide Program Dialogue Committee is in the public interest and supports the U.S. Environmental Protection Agency in performing its duties and responsibilities.

I am filing the enclosed charter with the Library of Congress. The Pesticide Program Dialogue Committee will be in effect for two years from the date it is filed with Congress. After two years, the charter may be renewed as authorized in accordance with Section 14 of FACA (5 U.S.C. App. 2 § 14).

If you have any questions or require additional information, please contact me or your staff may contact Christina Moody in EPA's Office of Congressional and Intergovernmental Relations at moody.christina@epa.gov or (202) 564-0260.

Sincerely,

A handwritten signature in black ink, which appears to read "Gina McCarthy", is positioned above the printed name.

Gina McCarthy

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 30 2015

THE ADMINISTRATOR

The Honorable Bill Shuster
Chairman
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

I am pleased to support the charter of the Environmental Protection Agency Science Advisory Board in accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2. The EPA Science Advisory Board is in the public interest and supports the U.S. Environmental Protection Agency in performing its duties and responsibilities.

I am filing the enclosed charter with the Library of Congress. The EPA Science Advisory Board will be in effect for two years from the date it is filed with Congress. After two years, the charter may be renewed as authorized in accordance with Section 14 of FACA (5 U.S.C. App. 2 § 14).

If you have any questions or require additional information, please contact me or your staff may contact Christina Moody in EPA's Office of Congressional and Intergovernmental Relations at moody.christina@epa.gov or (202) 564-0260.

Sincerely,

A handwritten signature in black ink, which appears to read "Gina McCarthy", is positioned below the word "Sincerely,".

Gina McCarthy

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 23 2015

OFFICE OF
AIR AND RADIATION

The Honorable Bill Shuster
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Shuster:

Thank you for your letter of November 4, 2015, to U.S. Environmental Protection Agency Administrator Gina McCarthy, regarding your concerns that the proposed standards for 2014 - 2016 under the Renewable Fuel Standard (RFS) program fall short of the statutory targets. The Administrator has asked me to respond to you on her behalf.

Under the Clean Air Act, as amended by the Energy Independence and Security Act of 2007, the EPA is required to set annual standards for the RFS program each year. The statute requires the EPA to establish annual percentage standards for cellulosic biofuel, biomass-based diesel, advanced biofuel, and total renewable fuels that apply to gasoline and diesel produced or imported in a given year.

In our June 10, 2015, proposal we made a preliminary determination that the market would experience significant uncertainty if the EPA were to ignore the constraints on supply and set the standards at the statutory targets, as we expect that there would be widespread shortfalls in supply under those circumstances. The proposal sought to balance two dynamics: Congress's clear intent to increase renewable fuels over time to address climate change and increase energy security, and real-world circumstances that have slowed progress towards such goals. In order to provide the certainty that investors and others in the market need, we proposed using the tools Congress provided to make adjustments to the law's volume targets. Though we proposed using the authority provided by Congress, we nevertheless proposed standards for cellulosic biofuel, advanced biofuel, and total renewable fuel that would result in ambitious, achievable growth in biofuels.

We held a public hearing on the proposal on June 25, 2015, in Kansas City, Kansas, where over 200 people provided testimony. Further, we received over 670,000 comments from the public comment period, which closed on July 27, 2015. We are taking those comments, as well as the thoughts you provided in your letter, under consideration as we prepare the final rulemaking which we intend to finalize by November 30, 2015.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Patricia Haman in the EPA's Office of Congressional and Intergovernmental Relations at haman.patricia@epa.gov or (202) 564-2806.

Sincerely,

A handwritten signature in black ink, appearing to read "Janet G. McCabe". The signature is fluid and cursive, with a long horizontal stroke at the end.

Janet G. McCabe
Acting Assistant Administrator



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR - 2 2016

OFFICE OF
CIVIL RIGHTS

The Honorable Bill Shuster
Chairman
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I am pleased to send you the enclosed copy of the U.S. Environmental Protection Agency's (EPA) Fiscal Year 2015 annual report prepared in accordance with Section 203 of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act), Public Law 107-174.

This report provides information regarding the number of cases arising under the respective areas of law cited in the No FEAR Act where discrimination was alleged; the amount of money required to be reimbursed by the EPA to the Judgment Fund in connection with such cases; the number of employees disciplined for discrimination, retaliation, harassment or any other infractions of any provision of law referred to under the Act; an analysis of trends and knowledge gained; and accomplishments.

An identical letter has been sent to each entity designated to receive this report as listed in Section 203 of the No FEAR Act. The U.S. Attorney General, the Chair of the U.S. Equal Employment Opportunity Commission, and the Director of the U.S. Office of Personnel Management will also be sent a copy of the report.

If you have any questions, please contact me, or your staff may contact Thea J. Williams in the EPA's Office of Congressional and Intergovernmental Relations at williams.thea@epa.gov or (202) 564-2064.

Sincerely,

A handwritten signature in black ink, which appears to read "Velveta Golightly-Howell".

Velveta Golightly-Howell
Director

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

THE ADMINISTRATOR

MAR - 7 2016

The Honorable Bill Shuster
Chairman
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

I am pleased to support the charter of the Environmental Financial Advisory Board in accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2. The Environmental Financial Advisory Board is in the public interest and supports the U.S. Environmental Protection Agency in performing its duties and responsibilities.

I am filing the enclosed charter with the Library of Congress. The Environmental Financial Advisory Board will be in effect for two years from the date it is filed with Congress. After two years, the charter may be renewed as authorized in accordance with Section 14 of FACA (5 U.S.C. App. 2 § 14).

If you have any questions or require additional information, please contact me or your staff may contact Christina Moody in EPA's Office of Congressional and Intergovernmental Relations at moody.christina@epa.gov or (202) 564-0260.

Sincerely,

A handwritten signature in black ink, which appears to read "Gina McCarthy", is positioned above the printed name.

Gina McCarthy

Enclosure



THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

MAY 09 2016

The Honorable Bill Shuster
Chairman
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

I am pleased to support the charter of the Board of Scientific Counselors in accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2. The Board of Scientific Counselors is in the public interest and supports the U.S. Environmental Protection Agency in performing its duties and responsibilities.

I am filing the enclosed charter with the Library of Congress. The Board of Scientific Counselors will be in effect for two years from the date it is filed with Congress. After two years, the charter may be renewed as authorized in accordance with Section 14 of FACA (5 U.S.C. App. 2 § 14).

If you have any questions or require additional information, please contact me or your staff may contact Christina Moody in EPA's Office of Congressional and Intergovernmental Relations at moody.christina@epa.gov or (202) 564-0260.

Sincerely,

A handwritten signature in black ink, which appears to read "Gina McCarthy", is written over a horizontal line.

Gina McCarthy

Enclosure



THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

JUN 06 2016

The Honorable Bill Shuster
Chairman
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

I am pleased to support the charter of the National Advisory Council for Environmental Policy and Technology in accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2. The National Advisory Council for Environmental Policy and Technology is in the public interest and supports the U.S. Environmental Protection Agency in performing its duties and responsibilities.

I am filing the enclosed charter with the Library of Congress. The National Advisory Council for Environmental Policy and Technology will be in effect for two years from the date it is filed with Congress. After two years, the charter may be renewed as authorized in accordance with Section 14 of FACA (5 U.S.C. App. 2 § 14).

If you have any questions or require additional information, please contact me or your staff may contact Christina Moody in EPA's Office of Congressional and Intergovernmental Relations at moody.christina@epa.gov or (202) 564-0260.

Sincerely,

A handwritten signature in black ink, appearing to read "Gina McCarthy", is positioned below the word "Sincerely,".

Gina McCarthy

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 12 2016

THE ADMINISTRATOR

The Honorable Bill Shuster
Chairman
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

I am pleased to support the charter of the National Environmental Justice Advisory Council in accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2. The National Environmental Justice Advisory Council is in the public interest and supports the U.S. Environmental Protection Agency in performing its duties and responsibilities.

I am filing the enclosed charter with the Library of Congress. The National Environmental Justice Advisory Council will be in effect for two years from the date it is filed with Congress. After two years, the charter may be renewed as authorized in accordance with Section 14 of FACA (5 U.S.C. App. 2 § 14).

If you have any questions or require additional information, please contact me or your staff may contact Christina Moody in EPA's Office of Congressional and Intergovernmental Relations at moody.christina@epa.gov or (202) 564-0260.

Sincerely,

A handwritten signature in black ink, which appears to read "Gina McCarthy", is positioned below the word "Sincerely,".

Gina McCarthy

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 17 2016

THE ADMINISTRATOR

The Honorable Bill Shuster
Chairman
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

I am pleased to support the charter of the Federal Insecticide, and Rodenticide Act Scientific Advisory Panel in accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2. The Federal Insecticide, and Rodenticide Act Scientific Advisory Panel is in the public interest and supports the U.S. Environmental Protection Agency in performing its duties and responsibilities.

I am filing the enclosed charter with the Library of Congress. The Federal Insecticide, and Rodenticide Act Scientific Advisory Panel will be in effect for two years from the date it is filed with Congress. After two years, the charter may be renewed as authorized in accordance with Section 14 of FACA (5 U.S.C. App. 2 § 14).

If you have any questions or require additional information, please contact me or your staff may contact Christina Moody in EPA's Office of Congressional and Intergovernmental Relations at moody.christina@epa.gov or (202) 564-0260.

Sincerely,

A handwritten signature in black ink, which appears to read "Gina McCarthy", is positioned below the word "Sincerely,".

Gina McCarthy

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 24 2016

THE ADMINISTRATOR

The Honorable Bill Shuster
Chairman
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

I am pleased to support the charter of the Clean Air Act Advisory Committee in accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2. The Clean Air Act Advisory Committee is in the public interest and supports the U.S. Environmental Protection Agency in performing its duties and responsibilities.

I am filing the enclosed charter with the Library of Congress. The Clean Air Act Advisory Committee will be in effect for two years from the date it is filed with Congress. After two years, the charter may be renewed as authorized in accordance with Section 14 of FACA (5 U.S.C. App. 2 § 14).

If you have any questions or require additional information, please contact me or your staff may contact Christina Moody in EPA's Office of Congressional and Intergovernmental Relations at moody.christina@epa.gov or (202) 564-0260.

Sincerely,

A handwritten signature in black ink, which appears to read "Gina McCarthy", is written over a horizontal line.

Gina McCarthy

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 07 2016

THE ADMINISTRATOR

The Honorable Bill Shuster
Chairman
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

I am pleased to support the charter of the National Environmental Education Advisory Council in accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2. The National Environmental Education Advisory Council is in the public interest and supports the U.S. Environmental Protection Agency in performing its duties and responsibilities.

I am filing the enclosed charter with the Library of Congress. The National Environmental Education Advisory Council will be in effect for two years from the date it is filed with Congress. After two years, the charter may be renewed as authorized in accordance with Section 14 of FACA (5 U.S.C. App. 2 § 14).

If you have any questions or require additional information, please contact me or your staff may contact Christina Moody in EPA's Office of Congressional and Intergovernmental Relations at moody.christina@epa.gov or (202) 564-0260.

Sincerely,

A handwritten signature in black ink, which appears to read "Gina McCarthy", is positioned below the word "Sincerely,".

Gina McCarthy

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN 17 2017

THE ADMINISTRATOR

The Honorable Bill Shuster
Chairman
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

I am pleased to file the enclosed amended charter for the Environmental Protection Agency Science Advisory Board in accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2. If you have any questions or require additional information, please contact me or your staff may contact Christina Moody in EPA's Office of Congressional and Intergovernmental Relations at moody.christina@epa.gov or (202) 564-0260.

Sincerely,

A handwritten signature in black ink, which appears to read "Gina McCarthy", is positioned above the printed name.

Gina McCarthy

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY - 3 2017

OFFICE OF
SOLID WASTE AND
EMERGENCY RESPONSE

NOW THE
OFFICE OF LAND AND
EMERGENCY MANAGEMENT

The Honorable Bill Shuster
Chairman, Committee on Transportation and Infrastructure
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your letter to extend the public comment period for the proposed *Financial Responsibility Requirements under CERCLA Section 108(b) for Classes of Facilities in the Hardrock Mining Industry* rule which was published in the *Federal Register* on January 11, 2017 (*see* 82 FR 3388).

We appreciate your interest in this proposed rule. The U.S. Environmental Protection Agency extended the comment period, and comments on the proposed rule are now due by July 11, 2017.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Carolyn Levine in the EPA's Office of Congressional and Intergovernmental Relations at levine.carolyn@epa.gov or at (202) 564-1859.

Sincerely,

A handwritten signature in black ink, appearing to read "Barry N. Breen", is written over the word "Sincerely,".

Barry N. Breen
Acting Assistant Administrator
Office of Land and Emergency Management



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 31 2017

OFFICE OF
CIVIL RIGHTS

The Honorable Bill Shuster
Chairman
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I am pleased to submit the enclosed copy of the U.S. Environmental Protection Agency's Fiscal Year 2016 annual report prepared in accordance with Section 203 of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act), Public Law 107-174.

This report provides information regarding the number of cases arising under the respective areas of law cited in the No FEAR Act where discrimination was alleged; the amount of money required to be reimbursed by the EPA to the Judgment Fund in connection with such cases; the number of employees disciplined for discrimination, retaliation, harassment or any other infractions of any provision of law referred to under the No FEAR Act; an analysis of trends and knowledge gained; and accomplishments.

An identical letter has been sent to each entity designated to receive this report as listed in Section 203 of the No FEAR Act. The U.S. Attorney General, the Chair of the U.S. Equal Employment Opportunity Commission, and the Director of the U.S. Office of Personnel Management will also be sent a copy of the report.

If you have any questions, please contact me, or your staff may contact Thea J. Williams in EPA's Office of Congressional and Intergovernmental Relations at williams.thea@epa.gov or (202) 564-2064.

Sincerely,

A handwritten signature in cursive script that reads "Tanya A. Lawrence".

Tanya A. Lawrence
Acting Director

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

THE ADMINISTRATOR

June 5, 2017

The Honorable Bill Shuster
Chairman
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

I am pleased to file the enclosed charter establishing the Negotiated Rulemaking Committee to Negotiate a Proposed Rule to Limit Chemical Data Reporting for Certain Inorganic Byproducts under TSCA Section 8(a) in accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2. This charter will be in effect for two years from the date the charter is filed with Congress. After two years, the charter may be renewed as authorized in accordance with Section 14 of FACA (5 U.S.C. App. 2 § 14).

If you have any questions or require additional information, please contact me or your staff may contact Christina Moody in EPA's Office of Congressional and Intergovernmental Relations at moody.christina@epa.gov or (202) 564-0260.

Respectfully yours,

A handwritten signature in black ink, which appears to read "Scott Pruitt", is written over a horizontal line.

E. Scott Pruitt

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

June 5, 2017

THE ADMINISTRATOR

The Honorable Bill Shuster
Chairman
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

I am pleased to file the enclosed charter renewing the Clean Air Scientific Advisory Committee in accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2. This charter will be in effect for two years from the date the charter is filed with Congress. After two years, the charter may be renewed as authorized in accordance with Section 14 of FACA (5 U.S.C. App. 2 § 14).

If you have any questions or require additional information, please contact me or your staff may contact Christina Moody in EPA's Office of Congressional and Intergovernmental Relations at moody.christina@epa.gov or (202) 564-0260.

Respectfully yours,

A handwritten signature in black ink, which appears to read "E. Scott Pruitt", is written over a horizontal line.

E. Scott Pruitt

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

THE ADMINISTRATOR

August 28, 2017

The Honorable Bill Shuster
Chairman
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

I am pleased to file the enclosed charter renewing the Hazardous Waste Electronic Manifest System Advisory Board in accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2. This charter will be in effect for two years from the date the charter is filed with Congress. After two years, the charter may be renewed as authorized in accordance with Section 14 of FACA (5 U.S.C. App. 2 § 14).

If you have any questions or require additional information, please contact me or your staff may contact Christina Moody in EPA's Office of Congressional and Intergovernmental Relations at moody.christina@epa.gov or (202) 564-0260.

Respectfully yours,

A handwritten signature in black ink, which appears to read "E. Scott Pruitt", is written over the "Respectfully yours," text.

E. Scott Pruitt

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 09 2016

THE ADMINISTRATOR

The Honorable Bill Shuster
Chairman
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

I am pleased to support the charter of the National Drinking Water Advisory Council in accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2. The National Drinking Water Advisory Council is in the public interest and supports the U.S. Environmental Protection Agency in performing its duties and responsibilities.

I am filing the enclosed charter with the Library of Congress. The National Drinking Water Advisory Council will be in effect for two years from the date the charter is filed with Congress. After two years, the charter may be renewed as authorized in accordance with Section 14 of FACA (5 U.S.C. App. 2 § 14).

If you have any questions or require additional information, please contact me or your staff may contact Christina Moody in EPA's Office of Congressional and Intergovernmental Relations at moody.christina@epa.gov or (202) 564-0260.

Sincerely,

A handwritten signature in black ink, which appears to read "Gina McCarthy", is positioned below the word "Sincerely,".

Gina McCarthy

Enclosure



THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

JUL 29 2015

The Honorable Bill Shuster
Chairman
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

I am pleased to support the charter of the Clean Air Scientific Advisory Committee in accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2. The Clean Air Scientific Advisory Committee is in the public interest and supports the U.S. Environmental Protection Agency in performing its duties and responsibilities.

I am filing the enclosed charter with the Library of Congress. The Clean Air Scientific Advisory Committee will be in effect for two years from the date it is filed with Congress. After two years, the charter may be renewed as authorized in accordance with Section 14 of FACA (5 U.S.C. App. 2 § 14).

If you have any questions or require additional information, please contact me or your staff may contact Christina Moody in EPA's Office of Congressional and Intergovernmental Relations at moody.christina@epa.gov or (202) 564-0260.

Sincerely,

A handwritten signature in dark ink, appearing to read "Gina McCarthy", is written over a faint, larger signature.

Gina McCarthy

Enclosure

**U.S. ENVIRONMENTAL
PROTECTION AGENCY**

Fiscal Year 2014

Annual Report to Congress
Pursuant to the
Notification and Federal Employee
Antidiscrimination and Retaliation
Act of 2002

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I. EXECUTIVE SUMMARY

The U.S. Environmental Protection Agency (EPA or Agency) provides its Annual Report to Congress as required by Section 203 of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act), Public Law 107-174. As required, this report includes information related to the number of cases in Federal court pending or resolved in fiscal year (FY) 2014 and, in connection with those cases, their disposition; reimbursement(s) to the Judgment Fund; and the number of employees disciplined and the nature of the disciplinary action taken.

During FY 2014, there were a total of twelve (12) cases pending before Federal courts. Of these, two (2) cases were settled during the reporting period. One settlement involved a payment of \$650,000. The other settlement involved a total payment of \$670,000, of which \$170,000 was designated for the payment of attorney's fees. Both settlement payments will be reimbursed to the Judgment Fund.

Final Agency Actions involving a finding of discrimination may be issued on the record or following an Equal Employment Opportunity Commission (EEOC) Administrative Hearing. The No FEAR Act requires Federal agencies to post the total number of final actions involving a finding of discrimination, along with the issues in and bases for such complaints. In 2014, EPA had one (1) finding of discrimination following an EEOC Administrative Hearing.

During FY 2014, Agency employees were required to complete the No Fear training hosted through Skillport. At the end of FY 2014, 99.7% of EPA's employees had completed this training.

EPA continues to realize many improvements in its complaint processing program, and the Agency was able to decrease the investigation timeframe by twenty-three percent (23%). Additionally, EPA experienced a twenty-one percent (21%) decrease in the number of complaints filed between FY 2013 and FY 2014, a five year low for the Agency.

EPA is dedicated to establishing and maintaining a model Civil Rights Program that serves as an example for all Federal agencies. EPA's commitment to this goal is reflected in the subject report which the Agency respectfully submits for review.

II. BACKGROUND

On May 15, 2002, Congress enacted the "Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002," or, as it is more commonly known, the No FEAR Act. One purpose of the Act is to "require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws." Public Law 107-174, Summary. In support of this purpose, Congress found that "agencies cannot be run effectively, if they practice or tolerate discrimination." Public Law 107-174, Title I, General Provisions, section 101(1).

Section 203 of the No FEAR Act requires that each Federal agency submit an annual Report to Congress not later than 180 days after the end of each fiscal year. Agencies must report on the number of Federal court cases pending or resolved in each fiscal year and arising under each of the respective areas of law specified in the Act in which discrimination or retaliation was alleged. In connection with those cases, agencies must report their status or disposition; the amount of money required to be reimbursed to the Judgment Fund; and the number of employees disciplined. Agencies must also report on any policies implemented related to appropriate disciplinary actions against a Federal employee who discriminated against any individual, or committed a prohibited personnel practice; any employees disciplined under such a policy for conduct inconsistent with Federal Antidiscrimination Laws and Whistleblower Protection Laws; and an analysis of the data collected relative to trends, causal analysis, and other information.

The Act imposes additional duties upon Federal agency employers intended to reinvigorate their longstanding obligation to provide a work environment free of discrimination and retaliation. The additional obligations contained in the No FEAR Act can be broken down into five (5) categories:

- A Federal agency must reimburse the Judgment Fund for payments made to employees, former employees, or applicants for Federal employment because of actual or alleged violations of Federal employment discrimination laws, Federal whistleblower protection laws, and retaliation claims arising from the assertion of rights under those laws.
- An agency must provide annual notice to its employees, former employees, and applicants for Federal employment concerning the rights and remedies applicable to them under the employment discrimination and whistleblower protection laws.
- At least every two years, an agency must provide training to its employees, including managers, regarding the rights and remedies available under the employment discrimination and whistleblower protection laws.
- Quarterly, an agency must post on its public website summary statistical data pertaining to Equal Employment Opportunity (EEO) complaints filed with the agency.

The President delegated responsibility to the Office of Personnel Management (OPM) for issuance of regulations governing implementation of Title II of the No FEAR Act. OPM published final regulations on the reimbursement provisions of the Act on May 10, 2006. Final regulations to carry out the notification and training requirements of the Act were published on July 20, 2006, and OPM published the final regulations to implement the reporting and best practices provisions of the No FEAR Act on December 28, 2006. The EEOC published its final regulations to implement the posting requirements of Title III of the No FEAR Act on August 2, 2006. The EPA has prepared the subject report based on the provisions of the No FEAR Act in accordance with OPM and EEOC's final regulations.

III. DATA

a. Civil Cases

Section 203(a)(1) of the No FEAR Act requires that agencies include in their Annual Report “the number of cases arising under each of the respective provisions of law covered by paragraphs (1) and (2) of section 201(a) in which discrimination on the part of such agency was alleged.”

Section 724.302 of OPM’s final regulations on reporting and best practices clarifies section 203 (1) of the No FEAR Act, stating that agencies report on the “number of cases in Federal Court [district and appellate] pending or resolved...arising under each of the respective provisions of the Federal Antidiscrimination laws and Whistleblower Protection Laws applicable to them...in which an employee, former Federal employee, or applicant alleged a violation(s) of these laws, separating data by the provision(s) of law involved.”

During FY 2014, there were a total of twelve (12) cases pending before Federal courts. Among these cases, there were eleven (11) claimed violations of Title VII of the Civil Rights Act of 1964, four (4) claimed violations of the Rehabilitation Act of 1973, six (6) claimed violations of the Age Discrimination in Employment Act, and one (1) claimed violation of 5 United States Code 2302, Prohibited Personnel Practices.

Of the twelve (12) cases referenced above, two (2) were settled during the reporting period. One settlement involved a payment of \$650,000. The other settlement involved a total payment of \$670,000, of which \$170,000 was designated for payment of attorney's fees. Both settlement payments will be reimbursed to the Judgment Fund.

Of the remaining ten (10) cases, one (1) involved an affirmance by a U.S. Court of Appeals of a lower court decision, upholding the Agency’s termination of an employee, one (1) is currently pending a decision on a dispositive motion, and the remainder are at the discovery stage in U.S. Federal District Courts.

b. Reimbursement to the Judgment Fund

During FY 2014, the Agency was required to reimburse two (2) settlement payments to the Judgment Fund. As noted, one settlement involved a payment of \$650,000, and the other involved a total payment of \$670,000, of which \$170,000 was designated for the payment of attorney's fees.

c. Disciplinary Actions (5 Code of Federal Regulations (C.F.R.) § 724.302 (a)(3) & (5))

There were no employees disciplined in FY 2014, in connection with any cases described in paragraph (a) above, or for any other conduct that is inconsistent with Federal Antidiscrimination Laws and Whistleblower Protection Laws or for conduct that constitutes prohibited personnel practices.

d. Final Year-End Data Posted Under Section 301(c)(1)(B)

The final year-end data posted pursuant to section 301(c)(1)(B) of the No FEAR Act are included in Appendix 1. The final year-end data indicate that during FY 2014, there was a twenty-one percent (21%) reduction in the number of formal complaints filed compared to FY 2013. In FY 2013, sixty-two (62) formal complaints of discrimination were filed with the Agency. During FY 2014, there were only forty-nine (49) new administrative complaints of discrimination filed by forty-six (46) employees or applicants for employment. Three (3) Agency employees filed more than one (1) complaint during the reporting period.

During FY 2014, EPA's Office of Civil Rights (OCR) decreased the investigation timeframe by twenty-three percent (23%) (318.11 days in FY 2013 to 245.08 days in FY 2014). During FY 2014, EPA had one (1) finding of discrimination following an EEOC Administrative Hearing.. FY 2014 complaint totals can be found in their entirety at Appendix 1 of this report.

e. Policy Description on Disciplinary Actions (5 C.F.R. § 724.302(a)(6))

The FY 2014 Agency EEO policy addresses a variety of topics, including prohibition of discrimination in the workplace, and it includes a reminder to all employees that the Agency will review any finding of discrimination and take disciplinary or corrective action, when appropriate. The EEO policy, as well as information on addressing harassment and reasonable accommodation, was discussed in EPA's mandatory Successful Leaders Program for all new Agency supervisors. The FY 2014 EEO Policy can be found in its entirety at Appendix 3 of this report.

Additionally, EPA Order 3110.6B, *Adverse Actions*, EPA Order 3120.1B, *Conduct and Discipline*, EPA Order 3120.2, *Conduct and Discipline, Senior Executive Service*, and applicable collective bargaining agreements, provide guidance to managers about the type of disciplinary actions that may be taken, when appropriate, in response to a finding of discriminatory behavior or conduct. These actions may range from informal corrective actions such as a written warning to more formal disciplinary actions such as a suspension without pay or removal.

EPA has an ongoing commitment to continue to include clear expectations about EEO in performance standards for managers. EPA has maintained revised Senior Executive Service standards that not only focus on preventing discrimination in hiring activities and promoting merit systems principles, but also require senior leaders to be personally involved in leading and implementing EEO and civil rights initiatives consistent with applicable laws. In addition, at the end of every performance cycle, the Director of OCR, Performance Review Board members, and Executive Review Board members evaluate management self-assessments to ensure that the respective rating is an appropriate reflection of the accomplishments listed.

f. No FEAR Act Training Plans (5 C.F.R. § 724.302 (a)(9))

During FY 2014, Agency employees were required to complete the No Fear training hosted through Skillport. At the end of FY 2014, 99.7% of our employees had finished the training.

IV. ANALYSIS OF TRENDS, CAUSAL ANALYSIS AND PRACTICAL KNOWLEDGE GAINED THROUGH EXPERIENCE (5 C.F.R. § 724.302 (a)(7))

At the conclusion of FY 2014, the bases of alleged discrimination most often raised were: (1) retaliation; (2) race; and (3) age. The forty-nine (49) EEO complaints filed in EPA in FY 2014 contained twenty-eight (28) allegations of retaliation, twenty-three (23) allegations of race discrimination, and twenty-one (21) allegations of age discrimination. While retaliation remains the top basis alleged in complaints filed for the fifth year in a row, it should be noted that retaliation is among the top three (3) bases most frequently alleged in discrimination complaints throughout the entire Federal workforce.¹

The data show that the 0.29% of the Agency workforce of 15,905 employees that have filed complaints falls well below the last reported government-wide average of 0.51% of the workforce that did.² The Agency saw a twenty-one percent (21%) decrease in the number of complaints filed from FY 2013 to FY 2014, a five year low for the Agency. Through training, EPA has begun concentrated focused on improving its EEO Counselors' ability to resolve informal complaints through traditional counseling techniques. EPA's informal Alternative Dispute Resolution (ADR) rates and traditional counseling resolution rates differ by less than one (1) percentage point. In FY 2014, the participation rate was 37.29% which decreased by almost twenty-five percent (25%) from FY 2013 to FY 2014. This slight decrease may be attributed to the fact that fifty percent (50%) of employees declining ADR were frequent filers. In FY 2015, to improve the ADR participation rate, the Agency formed a workgroup to identify and address potential concerns that may impact the ADR participation.

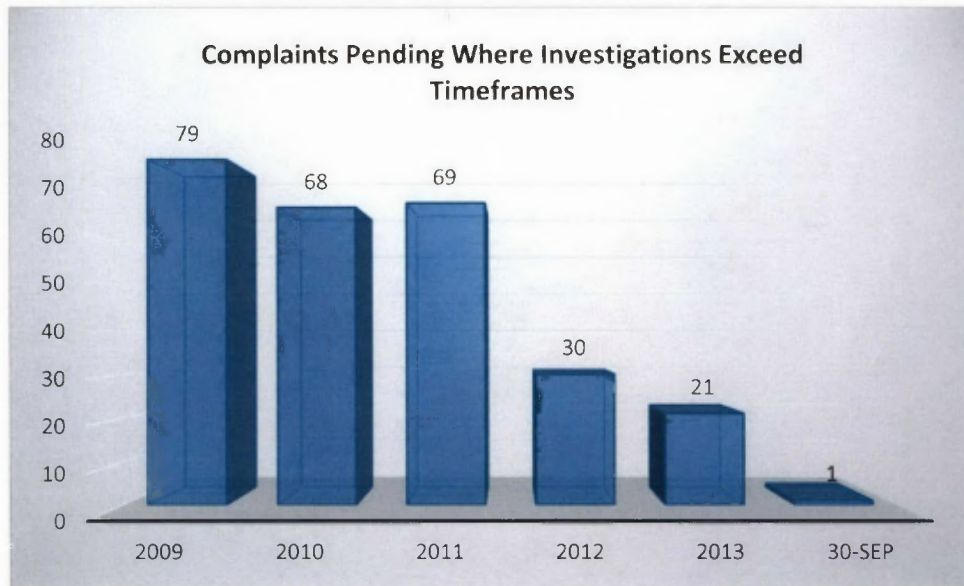
EPA continues to stress training as a method for ultimately reducing the number of Federal court judgments, awards, and formal complaints as managers and supervisors expand their knowledge of their responsibilities to promote equal employment opportunity.

EPA completed investigations for complaints pending during FY 2014 with an average processing time of 245 days, seventy-three (73) days sooner than the Agency FY 2013 average of 318 days. As discussed in the FY 2012 No Fear Report, and implemented effectively during FY 2013 and 2014, the Agency's revamped, streamlined investigative process has significantly improved the proportion of cases adjudicated timely.

During FY 2014, EPA's OCR procedurally dismissed ten (10) complaints. The average time to process a dismissal was 239 days, reflecting an increase from the FY 2013 processing average of 123 days pending prior to dismissal. Contributing factors may be related to the loss of an OCR attorney advisor. Additionally, staff attrition and the learning curve associated with directing new staff may have been contributing factors to these numbers.

¹ As reported in FY 2011 Report of the Federal Workforce. <http://www.eeoc.gov/federal/reports/fsp2012/index.cfm>.

² As reported in FY 2012 Report of the Federal Workforce. <http://www.eeoc.gov/federal/reports/fsp2012/index.cfm>.



V. ADJUSTMENTS TO BUDGET (5 C.F.R. § 724.302(a)(2)(ii))

As reported, during FY 2014, the Agency was required to reimburse the Judgment Fund in connection with two (2) settled cases. One settlement involved a payment of \$650,000, while the other settlement involved a total payment of \$670,000, \$170,000 of which was designated for the payment of attorney's fees.

VI. ACTIONS PLANNED OR TAKEN TO IMPROVE COMPLAINT OR CIVIL RIGHTS PROGRAMS (5 C.F.R. § 724.302 (a)(7)(iv))

EPA's Civil Rights program has taken several steps to strengthen EPA's commitment to civil rights, equal employment opportunity and diversity in the workplace:

- In FY 2014, OCR continued to make critical changes to its counseling program by selecting, training and retaining forty-four (44) professional collateral duty EEO Counselors. The EEO Training Committee continues to offer monthly training teleconferences to all EEO Counselors. The training has been presented by the EEO community, internal EPA partners and outside vendors. The timeliness and quality of EEO Counselors' Reports continues to show marked improvement. Counselors' reports are submitted, on average, in 11.7 days from the date the Notice of Right to File issued to aggrieved parties, which is less than the time required by EEOC Management Directive (MD) 110,³ and the utilization and success rate for ADR have all significantly improved.

³ 29 C.F.R. § 1614.105(c).requires counselors to submit counselors' reports within fifteen (15) days of being notified that a formal complaint has been filed.

- Promote the use of ADR to resolve Title VII complaints at the informal stages of the EEO complaint process. EPA will increase its efforts to market the program during informal phase of EEO counseling, via centralized EEO intake. OCR anticipates that using ADR in this way will help reduce costs associated with adjudicating formal complaints. OCR will continue using the shared neutrals programs in regions at no cost to EPA. OCR will market and promote ADR as part of overall Agency policy. OCR will continue to develop an ADR program to offer during the formal complaint process to ensure that ADR can be offered at each stage of the process in an effort to resolve any conflict at the lowest possible level.
- The Agency is currently developing a formal ADR program that will focus on increasing its offer rate in the formal complaint process to attain an anticipated increase in its resolution rate. Such program will continue to promote resolution at the lowest possible level by reengaging complainants and managers during a complaint's investigative stage and seek resolution prior to completing the investigation. The Agency will add language to formal acceptance and partial acceptance letters, advising complainants of the opportunity to utilize ADR in the formal stage.
- With regard to formal complaints, at the end of FY 14, OCR had two (2) cases pending investigation.. OCR will continue to monitor and evaluate its current Standard Operation Procedures for investigations and its Statement of Work with the United States Postal Service, its investigative contractor. OCR will make adjustments to promote the efficiency of the investigative process with the goal of completing investigations within in the 180 day requirement.
- To meet delineated goals, OCR will reevaluate its review and routing processes to determine the most efficient methods for obtaining legal sufficiency reviews while aggressively seeking to meet the regulatory requirement.
- Within the EPA, every member of the Senior Executive Service has had a performance standard related to equal employment opportunity and diversity in the workplace for several years. Senior managers must outline the specific related initiatives and actions they have personally undertaken and the results or effectiveness of those actions. At the end of every performance cycle, the Director of the Office of Civil Rights, Performance Review Board members, and Executive Review Board members review these self-assessments to verify that the respective rating for the EEO performance standard is a reflection of the accomplishments listed.
- EPA has taken steps to improve the timeliness of EEO investigations. Of particular note is the new requirement for contractors to deliver investigations on schedule or receive reduced payment and/or terminate the contract.

- All EPA investigators and counselors received the required annual training and/or refresher training in accordance with MD 110.
- EPA works to comply with orders from Administrative Judges in a timely manner, and this is a factor that is included in the performance standard of the Assistant Director, Office of Civil Rights, Employment Complaints Resolution Program (ECRP). In addition, EPA has established systems to ensure that the Agency initiates any monetary or other relief in a timely manner.
- OCR posts all No FEAR statistics on the OCR website on a quarterly basis.
- OCR management members make presentations during the monthly new employee orientations to ensure that all new employees are notified of the rights and remedies applicable to them under the employment discrimination and whistleblower protection laws.
- The Civil Rights Director and EEO Officials across the Agency participate in briefings, listening sessions, and brainstorming sessions to discuss EEO with managers, senior leaders and employees in order to identify and address any potential barriers and specific action items that can continue to improve the Agency's EEO and Civil Rights program.

APPENDIX 1

Equal Employment Opportunity Data Posted Pursuant to the No Fear Act:

EPA (and below)

For 4th Quarter 2014 for period ending September 30, 2014

Complaint Activity	Comparative Data					
	Previous Fiscal Year Data					2014Thru09-30
	2009	2010	2011	2012	2013	
Number of Complaints Filed	77	70	64	79	62	49
Number of Complainants	71	63	61	77	59	46
Repeat Filers	5	7	3	2	3	3
Complaints by Basis	Comparative Data					
	Previous Fiscal Year Data					2014Thru09-30
	2009	2010	2011	2012	2013	
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i>						
Race	33	39	25	40	22	23
Color	9	14	10	13	7	10
Religion	1	5	2	9	4	3
Reprisal	35	47	39	44	31	28
Sex	35	28	29	42	27	15
PDA	0	0	0	0	0	0
National Origin	6	14	10	13	12	10
Equal Pay Act	0	0	2	1	1	1
Age	37	28	21	37	22	22

Complaint Activity	Comparative Data					
	Previous Fiscal Year Data					2014Thru09-30
	2009	2010	2011	2012	2013	
Disability	25	21	24	25	19	18
Genetics	0	0	0	0	0	0
Non-EEO	0	0	1	8	7	6

Complaints by Issue	Comparative Data					
	Previous Fiscal Year Data					2014Thru09-30
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i>	2009	2010	2011	2012	2013	
Appointment/Hire	0	2	1	5	5	7
Assignment of Duties	6	18	12	12	5	5
Awards	2	6	2	5	0	3
Conversion to Full-time	0	0	0	2	0	0

Disciplinary Action

Demotion	0	0	0	0	0	0
Reprimand	3	3	3	2	3	5
Suspension	2	2	3	2	6	4
Removal	1	0	1	2	0	3
Other	0	3	2	4	2	0
Duty Hours	0	1	3	4	2	0
Evaluation Appraisal	9	14	11	21	9	5
Examination/Test	0	0	1	0	0	0

Harassment

Complaints by Issue	Comparative Data					
	Previous Fiscal Year Data					2014Thru09-30
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i>	2009	2010	2011	2012	2013	
Non-Sexual	36	35	30	32	22	19
Sexual	0	1	1	1	2	1
Medical Examination	0	0	0	0	0	0
Pay (Including Overtime)	2	3	4	4	1	0
Promotion/Non-Selection	24	24	18	26	10	8
Reassignment						
Denied	0	4	3	3	0	2
Directed	2	6	1	5	2	2
Reasonable Accommodation	6	2	8	7	9	3
Reinstatement	0	0	0	0	0	0
Retirement	1	0	0	2	1	2
Termination	7	4	9	5	4	1
Terms/Conditions of Employment	8	16	10	19	12	11
Time and Attendance	7	6	6	18	7	2
Training	7	6	4	11	2	6
Other	0	0	0	7	2	0
Processing Time	Comparative Data					
	Previous Fiscal Year Data					2014Thru09-30
	2009	2010	2011	2012	2013	

Complaints by Issue		Comparative Data					
		Previous Fiscal Year Data					2014Thru09-30
<i>Note: Complaints can be filed alleging multiple bases.The sum of the bases may not equal total complaints filed.</i>		2009	2010	2011	2012	2013	
Complaints pending during fiscal year							
Average number of days in investigation	138.00	285.43	256.62	326.57	311.07	245.08	
Average number of days in final action	171.55	255.50	374.57	310.50	103.58	194.07	
Complaint pending during fiscal year where hearing was requested							
Average number of days in investigation	0	213.67	263.57	324.42	314.44	249.50	
Average number of days in final action	13.50	2.75	11.75	197.64	28.73	25.07	
Complaint pending during fiscal year where hearing was not requested							
Average number of days in investigation	138.00	339.25	208.00	328.83	306.58	233.87	
Average number of days in final action	206.67	311.67	450.95	468.50	206.50	376.08	

Complaints Dismissed by Agency			Comparative Data											
			Previous Fiscal Year Data								2014Thru09-30			
			2009		2010		2011		2012				2013	
Total Complaints Dismissed by Agency			2		5		6		10		6		10	
Average days pending prior to dismissal			62		53		441		212		123		239	
Complaints Withdrawn by Complainants														
Total Complaints Withdrawn by Complainants			3		2		5		12		19		3	
Total Final Agency Actions Finding Discrimination			Comparative Data											
			Previous Fiscal Year Data										2014Thru09-30	
			2009		2010		2011		2012		2013			
			#	%	#	%	#	%	#	%	#	%		
Total Number Findings			0		0		1		0		0		1	
Without Hearing			0	0	0	0	0	0	0	0	0	0	0	0
With Hearing			0	0	0	0	1	100	0	0	0	0	1	100
Findings of Discrimination Rendered by Basis			Comparative Data											
			Previous Fiscal Year Data										2014Thru09-30	
Note: Complaints can be filed alleging multiple bases.The sum of the bases may not equal total complaints and findings.			2009		2010		2011		2012		2013			
			#	%	#	%	#	%	#	%	#	%	#	%
Total Number Findings			0		0		1		1		0		1	
Race			0	0	0	0	0	0	0	0	0	0	1	100

Findings of Discrimination Rendered by Basis	Comparative Data												
	Previous Fiscal Year Data										2014Thru09-30		
	2009		2010		2011		2012		2013				
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints and findings.</i>													
	#	%	#	%	#	%	#	%	#	%	#	%	
Color	0	0	0	0	0	0	0	0	0	0	0	0	0
Religion	0	0	0	0	0	0	0	0	0	0	0	0	0
Reprisal	0	0	0	0	1	100	1	100	0	0	0	0	0
Sex	0	0	0	0	0	0	0	0	0	0	1	100	
PDA	0	0	0	0	0	0	0	0	0	0	0	0	0
National Origin	0	0	0	0	0	0	0	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0	0	0	0	0	0	0	0
Age	0	0	0	0	0	0	0	0	0	0	1	100	
Disability	0	0	0	0	0	0	0	0	0	0	0	0	0
Genetics	0	0	0	0	0	0	0	0	0	0	0	0	0
Non-EEO	0	0	0	0	0	0	0	0	0	0	0	0	0
Findings After Hearing	0		0		1		0		0		1		
Race	0	0	0	0	0	0	0	0	0	0	1	100	
Color	0	0	0	0	0	0	0	0	0	0	0	0	0
Religion	0	0	0	0	0	0	0	0	0	0	0	0	0
Reprisal	0	0	0	0	1	100	0	0	0	0	0	0	0
Sex	0	0	0	0	0	0	0	0	0	0	1	100	
PDA	0	0	0	0	0	0	0	0	0	0	0	0	0

Findings of Discrimination Rendered by Basis	Comparative Data											
	Previous Fiscal Year Data										2014Thru09-30	
	2009		2010		2011		2012		2013			
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints and findings.</i>												
	#	%	#	%	#	%	#	%	#	%	#	%
National Origin	0	0	0	0	0	0	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0	0	0	0	0	0	0
Age	0	0	0	0	0	0	0	0	0	0	1	100
Disability	0	0	0	0	0	0	0	0	0	0	0	0
Genetics	0	0	0	0	0	0	0	0	0	0	0	0
Non-EEO	0	0	0	0	0	0	0	0	0	0	0	0
Findings Without Hearing	0		0		0		1		0		0	
Race	0	0	0	0	0	0	0	0	0	0	0	0
Color	0	0	0	0	0	0	0	0	0	0	0	0
Religion	0	0	0	0	0	0	0	0	0	0	0	0
Reprisal	0	0	0	0	0	0	1	100	0	0	0	0
Sex	0	0	0	0	0	0	0	0	0	0	0	0
PDA	0	0	0	0	0	0	0	0	0	0	0	0
National Origin	0	0	0	0	0	0	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0	0	0	0	0	0	0
Age	0	0	0	0	0	0	0	0	0	0	0	0
Disability	0	0	0	0	0	0	0	0	0	0	0	0
Genetics	0	0	0	0	0	0	0	0	0	0	0	0

Findings of Discrimination Rendered by Basis	Comparative Data											
	Previous Fiscal Year Data										2014Thru09-30	
	2009		2010		2011		2012		2013			
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints and findings.</i>	#	%	#	%	#	%	#	%	#	%	#	%
Non-EEO	0	0	0	0	0	0	0	0	0	0	0	0
Findings of Discrimination Rendered by Issue	Comparative Data											
	Previous Fiscal Year Data										2014Thru09-30	
	2009		2010		2011		2012		2013			
	#	%	#	%	#	%	#	%	#	%	#	%
Total Number Findings	0		0		1		1		0		1	
Appointment/Hire	0	0	0	0	0	0	0	0	0	0	1	100
Assignment of Duties	0	0	0	0	1	100	0	0	0	0	0	0
Awards	0	0	0	0	0	0	0	0	0	0	0	0
Conversion to Full-time	0	0	0	0	0	0	0	0	0	0	0	0
Disciplinary Action												
Demotion	0	0	0	0	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0	0	0	0	0	0	0
Suspension	0	0	0	0	0	0	0	0	0	0	0	0
Removal	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0	0	0	0	0	0	0
Evaluation Appraisal	0	0	0	0	0	0	0	0	0	0	0	0
Examination/Test	0	0	0	0	0	0	0	0	0	0	0	0

Findings of Discrimination Rendered by Basis	Comparative Data											
	Previous Fiscal Year Data										2014Thru09-30	
	2009		2010		2011		2012		2013			
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints and findings.</i>	#	%	#	%	#	%	#	%	#	%	#	%
Harassment												
Non-Sexual	0	0	0	0	1	100	1	100	0	0	0	0
Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0	0	0	0	0	0	0
Pay (Including Overtime)	0	0	0	0	0	0	0	0	0	0	0	0
Promotion/Non-Selection	0	0	0	0	0	0	0	0	0	0	0	0
Reassignment												
Denied	0	0	0	0	0	0	0	0	0	0	0	0
Directed	0	0	0	0	0	0	0	0	0	0	0	0
Reasonable Accommodation	0	0	0	0	0	0	0	0	0	0	0	0
Reinstatement	0	0	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	0	0	0	0	0	0
Termination	0	0	0	0	0	0	0	0	0	0	0	0
Terms/Conditions of Employment	0	0	0	0	0	0	0	0	0	0	0	0
Time and Attendance	0	0	0	0	0	0	0	0	0	0	0	0
Training	0	0	0	0	0	0	0	0	0	0	0	0
Other - User Defined	0	0	0	0	0	0	0	0	0	0	0	0

Findings of Discrimination Rendered by Basis	Comparative Data											
	Previous Fiscal Year Data										2014Thru09-30	
	2009		2010		2011		2012		2013			
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints and findings.</i>	#	%	#	%	#	%	#	%	#	%	#	%
Findings After Hearing	0		0		1		0		0		1	
Appointment/Hire	0	0	0	0	0	0	0	0	0	0	1	100
Assignment of Duties	0	0	0	0	1	100	0	0	0	0	0	0
Awards	0	0	0	0	0	0	0	0	0	0	0	0
Conversion to Full-time	0	0	0	0	0	0	0	0	0	0	0	0
Disciplinary Action												
Demotion	0	0	0	0	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0	0	0	0	0	0	0
Suspension	0	0	0	0	0	0	0	0	0	0	0	0
Removal	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0	0	0	0	0	0	0
Evaluation Appraisal	0	0	0	0	0	0	0	0	0	0	0	0
Examination/Test	0	0	0	0	0	0	0	0	0	0	0	0
Harassment												
Non-Sexual	0	0	0	0	1	100	0	0	0	0	0	0
Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0	0	0	0	0	0	0
Pay (Including Overtime)	0	0	0	0	0	0	0	0	0	0	0	0

Findings of Discrimination Rendered by Basis	Comparative Data											
	Previous Fiscal Year Data										2014Thru09-30	
	2009		2010		2011		2012		2013			
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints and findings.</i>	#	%	#	%	#	%	#	%	#	%	#	%
Promotion/Non-Selection	0	0	0	0	0	0	0	0	0	0	0	0
Reassignment												
Denied	0	0	0	0	0	0	0	0	0	0	0	0
Directed	0	0	0	0	0	0	0	0	0	0	0	0
Reasonable Accommodation	0	0	0	0	0	0	0	0	0	0	0	0
Reinstatement	0	0	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	0	0	0	0	0	0
Termination	0	0	0	0	0	0	0	0	0	0	0	0
Terms/Conditions of Employment	0	0	0	0	0	0	0	0	0	0	0	0
Time and Attendance	0	0	0	0	0	0	0	0	0	0	0	0
Training	0	0	0	0	0	0	0	0	0	0	0	0
Other - User Defined	0	0	0	0	0	0	0	0	0	0	0	0
Findings Without Hearing	0		0		0		1		0		0	
Appointment/Hire	0	0	0	0	0	0	0	0	0	0	0	0
Assignment of Duties	0	0	0	0	0	0	0	0	0	0	0	0
Awards	0	0	0	0	0	0	0	0	0	0	0	0

Findings of Discrimination Rendered by Basis	Comparative Data											
	Previous Fiscal Year Data										2014Thru09-30	
	2009		2010		2011		2012		2013			
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints and findings.</i>	#	%	#	%	#	%	#	%	#	%	#	%
Conversion to Full-time	0	0	0	0	0	0	0	0	0	0	0	0
Disciplinary Action												
Demotion	0	0	0	0	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0	0	0	0	0	0	0
Suspension	0	0	0	0	0	0	0	0	0	0	0	0
Removal	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0	0	0	0	0	0	0
Evaluation Appraisal	0	0	0	0	0	0	0	0	0	0	0	0
Examination/Test	0	0	0	0	0	0	0	0	0	0	0	0
Harassment												
Non-Sexual	0	0	0	0	0	0	1	100	0	0	0	0
Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0	0	0	0	0	0	0
Pay (Including Overtime)	0	0	0	0	0	0	0	0	0	0	0	0
Promotion/Non-Selection	0	0	0	0	0	0	0	0	0	0	0	0
Reassignment												
Denied	0	0	0	0	0	0	0	0	0	0	0	0
Directed	0	0	0	0	0	0	0	0	0	0	0	0

Findings of Discrimination Rendered by Basis	Comparative Data											
	Previous Fiscal Year Data										2014Thru09-30	
	2009		2010		2011		2012		2013			
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints and findings.</i>	#	%	#	%	#	%	#	%	#	%	#	%
Reasonable Accommodation	0	0	0	0	0	0	0	0	0	0	0	0
Reinstatement	0	0	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	0	0	0	0	0	0
Termination	0	0	0	0	0	0	0	0	0	0	0	0
Terms/Conditions of Employment	0	0	0	0	0	0	0	0	0	0	0	0
Time and Attendance	0	0	0	0	0	0	0	0	0	0	0	0
Training	0	0	0	0	0	0	0	0	0	0	0	0
Other - User Defined	0	0	0	0	0	0	0	0	0	0	0	0
Pending Complaints Filed in Previous Fiscal Years by Status					Comparative Data							
					Previous Fiscal Year Data							2014Thru09-30
					2009	2010	2011	2012	2013			
Total complaints from previous Fiscal Years					55	52	59	57	85	85		
Total Complainants					49	47	47	51	78	81		
Number complaints pending												
Investigation					47	39	50	19	10	2		
ROI issued, pending Complainant's action					0	0	0	3	3	0		
Hearing					31	25	33	36	56	59		

Pending Complaints Filed in Previous Fiscal Years by Status	Comparative Data					
	Previous Fiscal Year Data					2014Thru09- 30
	2009	2010	2011	2012	2013	
Final Agency Action	44	37	19	12	22	20
Appeal with EEOC Office of Federal Operations	6	6	11	16	22	26
Complaint Investigations	Comparative Data					
	Previous Fiscal Year Data					2014Thru09- 30
	2009	2010	2011	2012	2013	
Pending Complaints Where Investigations Exceed Required Time Frames	79	68	69	30	21	2

APPENDIX 2



THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

DEC 15 2014

MEMORANDUM

SUBJECT: Anti-Harassment Policy Statement

FROM: Gina McCarthy

A handwritten signature in blue ink, appearing to read "Gina McCarthy", is written over the "FROM:" line.

TO: All Employees

I want to reaffirm the U.S. Environmental Protection Agency's commitment to prohibit harassment of any kind, as clearly stated in our agency's anti-harassment policy. Harassment is unlawful when it is directed at an individual because of a lawfully protected basis and is sufficiently severe or pervasive that it creates a hostile work environment or takes the form of a tangible employment action. It is EPA policy to ensure that appropriate measures are implemented to prevent harassment, either sexual or nonsexual, in the workplace and to correct harassing conduct before it becomes severe or pervasive. EPA policy also strictly prohibits any retaliation against an employee who reports a concern about workplace harassment or assists in any inquiry about such a report.

For the purposes of this policy, unlawful harassment is defined as any unwelcome verbal or physical conduct based on race; color; sex, including pregnancy and gender identity/expression; national origin; religion; age; prior protected Equal Employment Opportunity activity; protected genetic information; sexual orientation or status as a parent when:

- the behavior can reasonably be considered to adversely affect the work environment; or
- an employment decision affecting the employee is based upon the employee's acceptance or rejection of such conduct.

Sexual harassment can be either a form of harassment based on a person's sex that need not involve conduct of a sexual nature or harassment involving any unwelcome sexual advance, request for sexual favors or other verbal or physical conduct of a sexual nature when:

- submission to such conduct is made explicitly or implicitly a term or condition of an employee's job, pay or career;
- submission to or rejection of such conduct by an employee is used as a basis for career or employment decisions affecting that employee; or
- such conduct has the purpose or effect of unreasonably interfering with an employee's performance or creates an intimidating, hostile or offensive environment.

Sexual harassment need not involve members of the opposite sex and can be perpetrated by and against members of either sex.

Examples of workplace harassment include:

- Oral or written communications that contain offensive name calling, jokes, slurs, negative stereotyping, hostility or threats. This includes comments or jokes that are distasteful or targeted at individuals or members of the lawfully protected bases set forth above.
- Nonverbal conduct, such as staring, leering and giving inappropriate gifts.
- Physical conduct, such as assault or unwanted touching.
- Visual images, such as derogatory or offensive pictures, cartoons or drawings. Such prohibited images include those in hard copy or electronic form.

The EPA does not permit harassment by or against anyone in the workplace. This includes any employee, applicant for EPA employment, grantee, contractor, Senior Environmental Employment enrollee or Federal Advisory Committee Act member. Workplace harassment should be reported immediately by the affected person to a first-line supervisor, a higher-level supervisor or manager in her or his chain of command, the Office of Inspector General or Labor and Employee Relations staff, as appropriate. Supervisors, in consultation with their human resources or legal offices, must conduct prompt, thorough and impartial inquiries.

If necessary and to the extent possible, measures must be taken to safeguard the anonymity of employees who file complaints. If management, in consultation with legal counsel, determines that harassment has occurred, it must be corrected as soon as possible. Harassing conduct by EPA employees need not rise to the level of unlawful harassment for it to constitute misconduct subject to corrective or disciplinary action.

In addition, EPA employees or applicants for employment may also use the complaint process established by the U.S. Equal Employment Opportunity Commission to file a complaint of harassment based on race, color, sex, religion, national origin, age, disability, prior protected EEO activity and protected genetic information for individual redress. To invoke that process, EPA employees and applicants must contact an EEO counselor within 45 days of an alleged incident of harassment. Reporting harassment to a supervisor in accordance with the previous paragraph does not satisfy this requirement and does not invoke the EEOC's process. EPA employees or applicants for employment may also report harassment based on sexual orientation and status as a parent to the EPA Office of Civil Rights.

Should you have any questions or need additional information about this policy, please contact the EPA Office of Human Resources at (202) 564-4646 or the EPA Office of Civil Rights at (202) 564-7272. Additional resources are available by visiting intranet.epa.gov/civilrights/lawsandstatus.htm.

APPENDIX 3



THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

DEC - 3 2014

MEMORANDUM

SUBJECT: 2014 Equal Employment Opportunity Policy Statement

FROM: Gina McCarthy 

TO: All Employees

I am proud to reaffirm the U.S. Environmental Protection Agency's commitment to equal employment opportunity in the workplace. Fostering a diverse and inclusive work environment through equal employment is essential to our work and our service to the American people.

The EPA cannot and will not tolerate discrimination based on race; color; religion; sex, including pregnancy, sex stereotyping, gender identity or gender expression; national origin; sexual orientation; physical or mental disability; age; protected genetic information; status as a parent; marital status; political affiliation; or retaliation based on previous EEO activity. In addition, the EPA will not tolerate any type of harassment – either sexual or nonsexual – of any employee or applicant for employment. Employment decisions, including those related to hiring, training or awards, must be made in accordance with the merit-system principles in 5 U.S.C. § 2301.

I expect our management team to continue to provide first-class leadership in support of equal-employment opportunities. I ask that EPA managers and employees take responsibility for treating each other with dignity and respect, reporting discriminatory conduct and preventing all types of discrimination, including harassment.

The EPA promotes the use of alternative-dispute-resolution methods to resolve workplace disputes or EEO complaints. Managers are reminded that their participation in agency-approved alternative-dispute-resolution efforts to resolve employee EEO complaints is required, absent extraordinary circumstances as determined by the Office of Civil Rights' director or designee.

Any employee, manager or applicant for employment who believes he or she has been subjected to discrimination has a right to seek redress within 45 calendar days of the alleged discriminatory event by contacting the EPA's Office of Civil Rights Employment Complaints Resolution staff at (202) 564-7272 or an EEO officer at the regional or laboratory level. The agency will review any finding of discrimination and, when necessary, take appropriate disciplinary or corrective action.

A professional, productive and inclusive workplace is essential to the EPA's mission to protect human health and the environment. Unlawful discrimination in the workplace, including retaliation and harassment, undermines the achievement of our agency's mission. I appreciate your shared commitment to equal opportunity at the EPA and look forward to continuing our work together.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY CHARTER

Chemical Safety Advisory Committee

1. Committee's Official Designation (Title):

Chemical Safety Advisory Committee (CSAC)

2. Authority:

This charter establishes the Chemical Safety Advisory Committee in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App.2 § 9 (c). The CSAC is in the public interest and will support the Environmental Protection Agency (EPA) in performing its duties and responsibilities under the Toxic Substances Control Act (TSCA), 15 U.S.C. 2601 et seq., the Pollution Prevention Act, 42 U.S.C. 13101 et seq., and other applicable statutes.

3. Objectives and Scope of Activities:

The CSAC will provide expert scientific advice, information, and recommendations to the Office of Pollution Prevention and Toxics (OPPT) on the scientific basis for risk assessments, methodologies, and pollution prevention measures or approaches. The Committee shall hold meetings, analyze issues, conduct reviews, produce reports, and make necessary recommendations to meet its responsibilities. The primary objectives are to provide expert advice and recommendations to EPA on:

- Review of: risk assessments; models; tools; guidance documents; chemical category documents; and other chemical assessment and pollution prevention products as deemed appropriate, that are prepared by OPPT; and
- Addressing other issues that OPPT identifies as critical to its programs.

4. Description of Committee's Duties:

The duties of the CSAC are solely advisory in nature.

5. Official(s) to Whom the Committee Reports:

The CSAC will submit advice and recommendations and report to the EPA Administrator through the EPA Assistant Administrator for the Office of Chemical Safety and Pollution Prevention.

6. Agency Responsible for Providing the Necessary Support:

EPA will be responsible for financial and administrative support. Within EPA, this support will be provided by the Office of Science Coordination and Policy (OSCP), within the Office of Chemical Safety and Pollution Prevention.

7. Estimated Annual Operating Costs and Person-Years:

The estimated annual operating cost of the CSAC is \$434,200, which includes one (1) person-year of support.

8. Designated Federal Officer:

A full-time or permanent part-time employee of EPA will be appointed as the Designated Federal Official (DFO). The DFO or a designee will be present at all meetings of the CSAC and subcommittees. Each meeting will be conducted in accordance with an agenda approved in advance by the DFO. The DFO will chair meetings when directed to do so by the official to whom the committee reports, and is authorized to adjourn any meeting when he or she determines it is in the public interest to do so.

9. Estimated Number and Frequency of Meetings:

The CSAC expects to meet approximately three (3) to four (4) times a year. Meetings may occur approximately once every three (3) to four (4) months or as needed and approved by the DFO. EPA may pay travel and per diem expenses when determined necessary and appropriate.

As required by FACA, the CSAC will hold open meetings unless the EPA Administrator determines that a meeting or a portion of a meeting may be closed to the public in accordance with 5 U.S.C. § 552b(c). Interested persons may attend meetings, appear before the CSAC as time permits, and file public comments.

10. Duration and Termination:

The CSAC will be examined annually and will exist until the EPA determines the committee is no longer needed. This charter will be in effect for two years from the date it is filed with Congress. After this two-year period, the charter may be renewed in accordance with Section 14 of FACA.

11. Member Composition:

The CSAC will be composed of approximately 10 members who will serve as Regular Government Employees (RGEs) or Special Government Employees (SGEs). Members will be persons who have demonstrated high levels of competence, knowledge, and expertise in

scientific/technical fields relevant to chemical risk assessment and pollution prevention. To the extent feasible, the members will include representation of the following disciplines, including, but not limited to: toxicology, pathology, environmental toxicology and chemistry, exposure assessment, and related sciences, e.g., synthetic biology, pharmacology, biotechnology, nanotechnology, biochemistry, biostatistics, PBPK modeling, computational toxicology, epidemiology, environmental fate, and environmental engineering and sustainability.

12. Subgroups:

EPA, or the CSAC with EPA's approval, may form subcommittees or workgroups for any purpose consistent with this charter. Such subcommittees or workgroups may not work independently of the chartered CSAC, and must report their recommendations and advice to the chartered committee for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered committee nor can they report directly to the EPA.

13. Recordkeeping:

The records of the CSAC, formally and informally established subcommittees or workgroups, or other subgroups of the committee, will be handled in accordance with NARA General Records Schedule 26, Item 2, and EPA Records Schedule 181, "Advisory Groups Established under the Federal Advisory Committee Act," or other approved agency records disposition schedule. Subject to the Freedom of Information Act, 5 U.S.C. 552, these records will be available for public inspection and copying, in accordance with the FACA.

APR 24 2015

Agency Approval Date

MAY 05 2015

GSA Consultation Date

JUN 29 2015

Date Filed with Congress

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY CHARTER

HUMAN STUDIES REVIEW BOARD

1. Committee's Official Designation (Title):

Human Studies Review Board

2. Authority:

This charter renews the Human Studies Review Board (HSRB) in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2. This Committee was established in February of 2006 under the authority of 40 CFR 26.1603. The HSRB is in the public interest and supports the U.S. Environmental Protection Agency (EPA) in performing its duties and responsibilities.

3. Objectives and Scope of Activities:

The HSRB will provide advice, information, and recommendations on issues related to scientific and ethical aspects of human subjects research.

The major objectives are to provide advice and recommendations on:

- a. Research Proposals and Protocols;
- b. Reports of completed research with human subjects; and
- c. How to strengthen EPA's programs for protection of human subjects of research.

4. Description of Committees Duties:

The duties of the HSRB are solely to provide scientific or policy advice to EPA.

5. Official(s) to Whom the Committee Reports:

HSRB will report to the EPA Administrator through EPA's Science Advisor.

6. Agency Responsible for Providing the Necessary Support:

EPA will be responsible for financial and administrative support. Within EPA, this support will primarily be provided by the Office of the Science Advisor (OSA).

7. Estimated Annual Operating Costs and Person Years:

The estimated annual operating cost of HSRB is \$424,000, which includes 1.2 person-years of support.

8. Designated Federal Officer:

A full-time or permanent part-time employee of EPA will be appointed as the Designated Federal Officer (DFO). The DFO or a designee will be present at all meetings of the advisory committee and subcommittees. Each meeting will be conducted in accordance with an agenda approved in advance by the DFO. The DFO is authorized to adjourn any meeting when he or she determines it is in the public interest to do so, and will chair meetings when directed to do so by the official to whom the committee reports.

9. Estimated Number and Frequency of Meetings:

The Committee expects to meet approximately four (4) times a year. Meetings may occur approximately once every three (3) months or as needed and approved by the DFO. EPA may pay travel and per diem expenses when determined necessary and appropriate.

As required by FACA, HSRB will hold open meetings unless the EPA Administrator determines that a meeting or a portion of a meeting may be closed to the public in accordance with 5 U.S.C. 552b(c). Interested persons may attend meetings, appear before the Board as time permits, and file comments with the HSRB.

10. Duration and Termination:

This charter will be in effect for two years from the date it is filed with Congress. After this two-year period, the charter may be renewed as authorized in accordance with Section 14 of FACA.

11. Member Composition:

The HSRB will be composed of approximately ten (10) members who will serve as Special Government Employees (SGEs) or Regular Government Employees (RGEs). In selecting members, the EPA will consider candidates from the environmental scientific/technical fields, human health care professionals, academia, industry, public and private research institutes or organizations, other governmental agencies, and other relevant interest areas. The HSRB membership will include experts in relevant scientific or technical disciplines such as bioethics, biostatistics, human health risk assessment and human toxicology.

12. Subgroups:

EPA, or the HSRB with EPA's approval, may form HSRB subcommittees or workgroups for any purpose consistent with this charter. Such subcommittees or workgroups may not work independently of the chartered committee and must report their recommendations and advice to the chartered HSRB for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered committee nor can they report directly to the Agency.

13. Recordkeeping:

The records of the Committee, formally and informally established subcommittees, or other subgroups of the Committee, will be handled in accordance with NARA General Records Schedule 26, Section 2 and EPA Records Schedule 181 or other approved agency records disposition schedule. Subject to the Freedom of Information Act, 5 U.S.C. 552, these records will be available for public inspection and copying, in accordance with the Federal Advisory Committee Act.

March 25, 2014

Agency Approval Date

July 29, 2015

Agency Approval Date for Amendment

March 28, 2014

Date Filed with Congress

AUG 28 2015

Date Amendment Filed with Congress

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY CHARTER

HAZARDOUS WASTE ELECTRONIC MANIFEST SYSTEM ADVISORY BOARD

1. Committee's Official Designation (Title):

Hazardous Waste Electronic Manifest System Advisory Board (Board)

2. Authority:

The Hazardous Waste Electronic Manifest System Advisory Board is established in accordance with the provisions of the Hazardous Waste Electronic Manifest Establishment Act, 42 USC § 6939g, and the Federal Advisory Committee Act (FACA), 5 U.S.C. App.2. The Board is in the public interest and supports the Environmental Protection Agency (EPA) in performing its duties and responsibilities.

3. Objectives and Scope of Activities:

The e-Manifest Board will provide recommendations on matters related to the operational activities, functions, policies, and regulations of the EPA under the e-Manifest Act, including:

- The effectiveness of the e-Manifest IT system and associated user fees and processes;
- Matters and policies related to the e-Manifest program;
- Issues in the e-Manifest area, including issues identified in EPA's E-Enterprise strategy that intersect with e-Manifest, such as:
 - Business to business communications
 - Performance standards for mobile devices
 - EPA's Cross Media Electronic Reporting Rule (CROMERR) compliant e-signatures;
- Regulations and guidance as required by the e-Manifest Act;
- Actions to encourage the use of the electronic (paperless) system; and
- Changes to the user fees as described in Section 3024(c)(3)(B)(i).

The e-Manifest Board will focus on those operational issues that e-Manifest will address first. If broader issues are identified that have implications for E-Enterprise, recommendations on those issues will be referred to the Office of the Chief Financial Officer (OCFO) by the Office of Solid Waste and Emergency Response (OSWER).

4. Description of Committees Duties:

The sole duty of the Board is to provide advice and recommendations to the EPA Administrator.

5. Official(s) to Whom the Committee Reports:

The Board will report its advice and recommendations to the EPA Administrator through the Assistant Administrator for OSWER. Any recommendations related to E-Enterprise will be forwarded to OCFO by OSWER.

6. Agency Responsible for Providing the Necessary Support:

EPA will be responsible for financial and administrative support. Within EPA, this support will be provided by OSWER.

7. Estimated Annual Operating Costs and Work Years:

The estimated annual operating cost of the Board is \$144,800, which includes approximately one half (.5) person-year of support.

8. Designated Federal Officer:

A full-time or permanent part-time employee of EPA will be appointed as the Designated Federal Officer (DFO). The DFO or a designee will be present at all meetings of the advisory committee and subcommittees. Each meeting will be conducted in accordance with an agenda approved in advance by the DFO. The DFO is authorized to adjourn any meeting when he or she determines it is in the public interest to do so and will chair meetings when directed to do so by the official to whom the committee reports.

9. Estimated Number and Frequency of Meetings:

The e-Manifest Board will meet at least annually as required by the e-Manifest Act. Additional meetings by teleconference may occur approximately once every six (6) months or as needed and approved by the DFO.

As required by FACA, the Board will hold open meetings unless the EPA Administrator (or designee) determines that a meeting or a portion of a meeting may be closed to the public in accordance with 5 U.S.C. 552b(c). Interested persons may attend meetings, appear before the committee, and file comments with the Board.

10. Duration and Termination:

The e-Manifest Board will be needed on a continuing basis. This charter will be in effect for two years from the date it is filed with Congress. After this two-year period, the charter may be renewed in accordance with Section 14 of FACA.

11. Member Composition:

As required by the e-Manifest Act, the e-Manifest Board will be composed of nine (9) members. One (1) member will be the EPA Administrator (or a designee), who will serve as Chairperson of the Board. The rest of the committee will be composed of:

- At least two (2) members who have expertise in information technology;
- At least three (3) members who have experience in using or represent users of the manifest system to track the transportation of hazardous waste under the e-Manifest Act;
- At least three (3) members who will be State representatives responsible for processing e-Manifests.

All members of the e-Manifest Board, with the exception of the EPA Administrator, will be appointed as Special Government Employees or representatives.

12. Subgroups:

EPA, or the e-Manifest Board with EPA's approval, may form subcommittees or working groups for any purpose consistent with this charter. Such subcommittees or working groups may not work independently of the chartered committee and must report their recommendations and advice to the chartered Board for full deliberation and discussion. Subcommittees or working groups have no authority to make decisions on behalf of the chartered Board and they cannot report directly to the Agency.

13. Recordkeeping:

The records of the committee, formally and informally established subcommittees, or other subgroups of the committee, will be handled in accordance with NARA General Records Schedule 26, Section 2 and EPA Records Schedule 181 or other approved agency records disposition schedule. Subject to the Freedom of Information Act, 5 U.S.C. § 552, these records will be available for public inspection and copying, in accordance with the Federal Advisory Committee Act.

August 4, 2015

Agency Approval Date

AUG 28 2015

Date Filed with Congress

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY CHARTER

CHILDREN'S HEALTH PROTECTION ADVISORY COMMITTEE

1. **Committee's Official Designation (Title):**

Children's Health Protection Advisory Committee

2. **Authority:**

This charter renews the Children's Health Protection Advisory Committee (CHPAC) in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App.2. CHPAC is in the public interest and supports the Environmental Protection Agency (EPA) in performing its duties and responsibilities under Executive Order 13045 of April 21, 1997 (62 Fed. Reg. 19885 (April 23, 1997)).

3. **Objectives and Scope of Activities:**

CHPAC is a policy-oriented committee that will provide policy advice, information and recommendations to assist EPA in the development of regulations, guidance and policies to address children's environmental health.

The major objectives are to provide policy advice and recommendations on:

- a. Policy issues associated with regulations, economics, and outreach/communications to address prevention of adverse health effects to children, and improve the breadth and depth of analyses related to these efforts;
- b. Critical policy and technical issues relating to children's health.

4. **Description of Committees Duties:**

The duties of CHPAC are solely to provide policy advice to EPA.

5. **Official(s) to Whom the Committee Reports:**

CHPAC will provide policy advice and recommendations and report to the EPA Administrator.

6. **Agency Responsible for Providing the Necessary Support:**

EPA will be responsible for financial and administrative support. Within EPA, this support will be provided by the Office of Children's Health Protection, Office of the

Administrator.

7. **Estimated Annual Operating Costs and Work Years:**

The estimated annual operating cost of CHPAC is \$395,000, which includes 1.0 person-years of support.

8. **Designated Federal Officer:**

A full-time or permanent part-time employee of EPA will be appointed as the Designated Federal Officer (DFO). The DFO or a designee will be present at all meetings of the advisory committee and subcommittees. Each meeting will be conducted in accordance with an agenda approved in advance by the DFO. The DFO is authorized to adjourn any meeting when he or she determines it is in the public interest to do so, and will chair meetings when directed to do so by the official to whom the committee reports.

9. **Estimated Number and Frequency of Meetings:**

CHPAC expects to meet approximately three (3) times a year. Meetings may occur approximately once every four (4) months or as needed and approved by the DFO. EPA may pay travel and per diem expenses when determined necessary and appropriate.

As required by FACA, the CHPAC will hold open meetings unless the EPA Administrator determines that a meeting or a portion of a meeting may be closed to the public in accordance with 5 U.S.C. 552b(c). Interested persons may attend meetings, appear before the committee as time permits, and file comments with the CHPAC.

10. **Duration and Termination:**

CHPAC will be examined annually and will exist until the EPA determines the committee is no longer needed. This charter will be in effect for two years from the date it is filed with Congress. After this two-year period, the charter may be renewed as authorized in accordance with Section 14 of FACA.

11. **Member Composition:**

CHPAC will be composed of approximately 18-24 members. Members will serve as Representatives of non-Federal interests, Regular Government Employees (RGE), or Special Government Employees (SGEs). Representative members are selected to represent the points of view held by specific organizations, associations, or classes of individuals. In selecting members, EPA will consider candidates from Federal, State, local and Tribal governments, the regulated community, public interest groups, health care organizations and academic institutions.

12. **Subgroups:**

EPA, or the CHPAC with EPA's approval, may form CHPAC subcommittees or workgroups for any purpose consistent with this charter. Such subcommittees or workgroups

may not work independently of the chartered committee and must report their recommendations and advice to the chartered CHPAC for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered committee nor can they report directly to the EPA.

13. Recordkeeping:

The records of the committee, formally and informally established subcommittees, or other subgroups of the committee, will be handled in accordance with NARA General Records Schedule 6.2 and EPA Records Schedule 181 or other approved agency records disposition schedule. Subject to the Freedom of Information Act, 5 U.S.C. 552, these records will be available for public inspection and copying, in accordance with the Federal Advisory Committee Act.

July 23, 2015

Agency Approval Date

August 11, 2015

GSA Consultation Date

SEP 11 2015

Date Filed with Congress

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY CHARTER

EPA SCIENCE ADVISORY BOARD

1. **Committee's Official Designation (Title):**

EPA Science Advisory Board

2. **Authority:**

This charter renews the EPA Science Advisory Board (SAB) in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2. The SAB is in the public interest and supports EPA in performing its duties and responsibilities. The SAB was created in 1978 pursuant to the Environmental Research, Development, and Demonstration Authorization Act (ERDDAA) (codified at 42 U.S.C. 4365). The SAB's charter has been renewed every two years, with the last renewal on November 1, 2013.

3. **Objectives and Scope of Activities:**

The SAB is identified as a scientific/technical advisory committee. The objective of the SAB is to provide independent advice and peer review to EPA's Administrator on the scientific and technical aspects of environmental issues. While the SAB reports to the EPA Administrator, congressional committees specified in ERDDAA may ask the EPA Administrator to have the SAB provide scientific advice on a particular issue. The SAB will review scientific issues, provide independent scientific and technical advice on EPA's major programs, and perform special assignments as requested by Agency officials.

The major objectives are to review and provide EPA advice and recommendations on:

- a. The adequacy and scientific basis of any proposed criteria document, standard, limitation, or regulation under the Clean Air Act, the Federal Water Pollution Control Act, the Clean Water Act, the Resource Conservation and Recovery Act, the Toxic Substances Control Act, the Safe Drinking Water Act, the Comprehensive Environmental Response, Compensation, and Liability Act, or any other authority of the Administrator;
- b. The scientific and technical adequacy of Agency programs, guidelines, documents, methodologies, protocols and tests;
- c. New or revised scientific criteria or standards for protection of human health and the environment;

- d. New information needs and the quality of Agency plans and programs for research, development and demonstration; and
- e. The relative importance of various natural and anthropogenic pollution sources.

As appropriate, the SAB will consult and coordinate its work with the Clean Air Scientific Advisory Committee, the National Advisory Council for Environmental Policy and Technology, the Children's Health Protection Advisory Committee, the Office of Pesticide Program's FIFRA Scientific Advisory Panel, the Office of Research and Development's Board of Scientific Counselors, and other Federal Advisory Committees.

4. Description of Committees Duties:

The duties of the SAB are solely to provide scientific advice and recommendations.

5. Official(s) to Whom the Committee Reports:

The SAB will report its advice and recommendations to the EPA Administrator. When scientific advice is requested by one of the congressional committees specified in ERDDAA, the Administrator will, when appropriate, forward the SAB's advice to the requesting congressional committees.

6. Agency Responsible for Providing the Necessary Support:

EPA will be responsible for financial and administrative support. Within EPA, this support will be provided by the Office of the Administrator.

7. Estimated Annual Operating Costs and Work Years:

The estimated annual operating cost of the SAB is \$3,000,000 which includes 13.0 person-years of support.

8. Designated Federal Officer:

The SAB Staff Director will appoint full-time employees of EPA as the Designated Federal Officers (DFO) for the SAB and its committees and panels. A DFO (or a designee) will be present at all meetings. The DFO will approve the meeting agenda in advance and ensure that each meeting is conducted in accordance with FACA, including availability of meeting materials. The DFO has the authority to adjourn any meeting when he or she determines it is in the public interest to do so, and will chair meetings when directed to do so by the official to whom the committee reports.

9. Estimated Number and Frequency of Meetings:

There will be approximately 8-10 meetings of the SAB each year. Meetings may occur as needed and approved by the SAB Staff Director. In addition, there will be approximately 25-30 meetings of SAB's committees and panels each year, as needed and approved by the SAB Staff Director. The SAB uses the term "committee" to mean a standing subcommittee of the chartered SAB. EPA may pay travel and per diem expenses when determined necessary and appropriate.

As required by FACA, SAB meetings will be open to the public unless the Administrator determines that a meeting or a portion of a meeting may be closed in accordance with 5 U.S.C. 552b(c). Consistent with EPA policy, SAB committee and panel meetings generally will be open to the public. Interested persons may attend meetings, appear before, or file comments with the SAB, and its committees and panels.

10. Duration and Termination:

The SAB will be needed on a continuing basis. This charter will be in effect for two years from the date it is filed with Congress. After this two-year period, the charter may be renewed in accordance with Section 14 of FACA.

11. Member Composition:

The SAB will be composed of about 45 members. The number of members may be adjusted as necessary to provide leadership to SAB committees and panels. Most SAB members will serve as Special Government Employees. Members will be independent experts in the fields of science, engineering, and economics and other social sciences to provide a range of expertise required to assess the scientific and technical aspects of environmental issues. In addition, the chair of the Clean Air Scientific Advisory Committee will be an SAB member.

12. Subgroups:

EPA, in consultation with the SAB, may form committees, panels, or workgroups for any purpose consistent with this charter. Such committees, panels or workgroups may not work independently of the chartered committee and must report their recommendations and advice to the chartered SAB for full deliberation, discussion and approval. Each committee, panel or workgroup will be chaired by a member of the chartered SAB. Most members of SAB committees, panels, and workgroups will serve as Special Government Employees. Committees, panels, and workgroups have no authority to make decisions on behalf of the SAB and may not report directly to the Agency.

13. Recordkeeping:

The records of the committee, formally and informally established subcommittees, or other subgroups of the committee, will be handled in accordance with NARA General Records Schedule 6.2 and EPA Records Schedule 181 or other approved agency records disposition schedule. Subject to the Freedom of Information Act, 5 U.S.C. 552, these records will be available for public inspection and copying, in accordance with the Federal Advisory Committee Act.

Agency Approval Date

Date Filed with Congress

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY CHARTER

LOCAL GOVERNMENT ADVISORY COMMITTEE

1. **Committee's Official Designation (Title):**

Local Government Advisory Committee

2. **Authority:**

This charter renews the Local Government Advisory Committee (LGAC) in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2. The LGAC is in the public interest and supports the EPA in performing its duties and responsibilities under federal environmental statutes.

3. **Objectives and Scope of Activities:**

Federal environmental statutes provide for the delegation of programs to state and local governments. The states and local governments are ultimately responsible for the implementation of many public health and environmental programs that ensure that citizens have clean air and water, safe drinking water, and environmentally sound waste disposal. The LGAC is an independent, policy-oriented advisory committee. To assist the agency in ensuring that its regulations, policies, guidance, and technical assistance improve the capacity of local governments to carry-out these programs, the LGAC provides policy advice and recommendations to the EPA on:

- a. Changes needed to allow flexibility and innovation and to accommodate local needs without compromising environmental performance, accountability, or fairness;
- b. Ways to improve performance measurement and speed dissemination of new environmental protection techniques and technologies among local governments;
- c. Ways in which the EPA and states can help local governments strengthen their capacity to promote environmental quality, including public access, community right-to-know, and performance measurement;
- d. Projects to help local governments deal with the challenge of financing environmental protection infrastructure; and,

- e. EPA's policies, procedures, and practices regarding local government (development, implementation, and evaluation) including how those policies, procedures and practices further the Administrator's priorities regarding environmental justice, climate change and sustainability, among others.

4. Description of Committees Duties:

The duties of LGAC are solely to provide independent policy advice to the EPA Administrator.

5. Official(s) to Whom the Committee Reports:

The LGAC will submit advice and recommendations, and report to the EPA Administrator, through the Office of Congressional and Intergovernmental Relations.

6. Agency Responsible for Providing the Necessary Support:

The EPA will be responsible for financial and administrative support. Within the EPA, this support will be provided by the Office of Congressional and Intergovernmental Relations, Office of the Administrator.

7. Estimated Annual Operating Costs and Work Years:

The estimated annual operating cost of the LGAC is \$450,000 which includes 3.0 person-years of support.

8. Designated Federal Officer:

A full-time or permanent part-time employee of the EPA will be appointed as the Designated Federal Officer (DFO). The DFO or a designee will be present at all meetings of the advisory committee and subcommittee. Each meeting will be conducted in accordance with an agenda approved in advance by the DFO. The DFO is authorized to adjourn any meeting when he or she determines it is in the public interest to do so and will chair meetings when directed to do so by the official to whom the committee reports.

9. Estimated Number and Frequency of Meetings:

The LGAC expects to meet in person or by teleconference approximately four (4) to six (6) times a year. Meetings may occur approximately once every three (3) months or as

needed and approved by the DFO. The EPA may pay travel and per diem expenses when determined necessary and appropriate.

As required by the FACA, the LGAC will hold open meetings unless the EPA Administrator determines that a meeting or a portion of a meeting may be closed to the public in accordance with 5 U.S.C. 552b(c). Interested persons may attend meetings, appear before the committee as time permits, and file comments with the LGAC.

10. Duration and Termination:

The LGAC will be examined annually and will exist until the EPA Administrator determines the committee is no longer needed. This charter will be in effect for two years from the date it is filed with Congress. After this two-year period, the charter may be renewed as authorized in accordance with Section 14 of the FACA.

11. Member Composition:

The LGAC will be composed of approximately thirty (30) current elected and appointed local, state and tribal government officials. Members will serve as Representative members of non-Federal interests. In selecting members, the EPA will consider candidates who are currently elected or appointed officials representing: States, counties, cities, and other local governments, small communities, and tribal governments. The EPA will consider candidates such as mayors, city council members, county commissioners and executives, city managers, small town officials, public works, public health and environmental directors, tribal government leaders, and state officials including legislators and environmental and agricultural directors.

12. Subgroups:

The EPA, or the LGAC with the EPA's approval, may form subcommittees or workgroups for any purpose consistent with this charter. Such subcommittees or workgroups may not work independently of the committee and must report their recommendations and advice to the chartered LGAC for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered committee nor can they report directly to the EPA.

13. Recordkeeping:

The records of the committee, formally and informally established subcommittees, or other subgroups of the committee, will be handled in accordance with General Records Schedule 6.2 and EPA Records Schedule 181 or other approved agency records

disposition schedule. Subject to the Freedom of Information Act, 5 U.S.C. 552, these records will be available for public inspection and copying, in accordance with the Federal Advisory Committee Act.

November 20, 2015

Agency Approval Date

December 1, 2015

GSA Consultation Date

December 11, 2015

Date Filed with Congress

**U.S. ENVIRONMENTAL
PROTECTION AGENCY**

Fiscal Year 2015

Annual Report to Congress
Pursuant to the
Notification and Federal Employee
Antidiscrimination and Retaliation
Act of 2002

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I. EXECUTIVE SUMMARY

The U.S. Environmental Protection Agency (EPA or Agency) provides its Annual Report to Congress as required by Section 203 of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act), Public Law 107-174. As required, this report includes information related to the number of cases in Federal court pending or resolved in fiscal year (FY) 2015 and, in connection with those cases, their disposition; reimbursement(s) to the Judgment Fund; and the number of employees disciplined and the nature of the disciplinary action taken.

During FY 2015, there were a total of 13 cases pending before Federal courts. Among these cases, there were eight (8) claims of violation of Title VII, seven (7) claims of violation of the Rehabilitation Act, five (5) claims of violation of the Age Discrimination in Employment Act, and one (1) claim of violation of 5 U.S.C. 2302.

Final Agency Actions involving a finding of discrimination may be issued on the record or following an Equal Employment Opportunity Commission (EEOC) Administrative Hearing. The No FEAR Act requires Federal agencies to post the total number of final actions involving a finding of discrimination, along with the issues in and bases for such complaints. In 2015, EPA had one (1) finding of discrimination following an EEOC Administrative Hearing.

EPA is dedicated to establishing and maintaining a model Civil Rights Program that serves as an example for all Federal agencies. EPA's commitment to this goal is reflected in the subject report which the Agency respectfully submits for review.

II. BACKGROUND

On May 15, 2002, Congress enacted the "Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002," or, as it is more commonly known, the No FEAR Act. One purpose of the Act is to "require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws." Public Law 107-174, Summary. In support of this purpose, Congress found that "agencies cannot be run effectively, if they practice or tolerate discrimination." Public Law 107-174, Title I, General Provisions, section 101(1).

Section 203 of the No FEAR Act requires that each Federal agency submit an annual Report to Congress not later than 180 days after the end of each fiscal year. Agencies must report on the number of Federal court cases pending or resolved in each fiscal year and arising under each of the respective areas of law specified in the Act in which discrimination or retaliation was alleged. In connection with those cases, agencies must report their status or disposition; the amount of money required to be reimbursed to the Judgment Fund; and the number of employees disciplined. Agencies must also report on any policies implemented related to appropriate disciplinary actions against a Federal employee who discriminated against any individual, or committed a prohibited personnel practice; any employees disciplined under such a policy for conduct inconsistent with Federal Antidiscrimination Laws and Whistleblower Protection Laws; and an analysis of the data collected relative to trends, causal analysis, and other information.

The Act imposes additional duties upon Federal agency employers intended to reinvigorate their longstanding obligation to provide a work environment free of discrimination and retaliation. The additional obligations contained in the No FEAR Act can be broken down into four (4) categories:

- A Federal agency must reimburse the Judgment Fund for payments made to employees, former employees, or applicants for Federal employment because of actual or alleged violations of Federal employment discrimination laws, Federal whistleblower protection laws, and retaliation claims arising from the assertion of rights under those laws.
- An agency must provide annual notice to its employees, former employees, and applicants for Federal employment concerning the rights and remedies applicable to them under the employment discrimination and whistleblower protection laws.
- At least every two (2) years, an agency must provide training to its employees, including managers, regarding the rights and remedies available under the employment discrimination and whistleblower protection laws.
- Quarterly, an agency must post on its public website summary statistical data pertaining to Equal Employment Opportunity (EEO) complaints filed with the agency.

The President delegated responsibility to the Office of Personnel Management (OPM) for issuance of regulations governing implementation of Title II of the No FEAR Act. OPM published final regulations on the reimbursement provisions of the Act on May 10, 2006. Final regulations to carry out the notification and training requirements of the Act were published on July 20, 2006, and OPM published the final regulations to implement the reporting and best practices provisions of the No FEAR Act on December 28, 2006. The EEOC published its final regulations to implement the posting requirements of Title III of the No FEAR Act on August 2, 2006. The EPA has prepared the subject report based on the provisions of the No FEAR Act in accordance with OPM and EEOC's final regulations.

III. DATA

a. Civil Cases

Section 203(a)(1) of the No FEAR Act requires that agencies include in their Annual Report "the number of cases arising under each of the respective provisions of law covered by paragraphs (1) and (2) of section 201(a) in which discrimination on the part of such agency was alleged." Section 724.302 of OPM's final regulations on reporting and best practices clarifies section 203 (1) of the No FEAR Act, stating that agencies report on the "number of cases in Federal Court [district and appellate] pending or resolved...arising under each of the respective provisions of the Federal Antidiscrimination laws and Whistleblower Protection Laws applicable to them...in which an employee, former Federal employee, or applicant alleged a violation(s) of these laws, separating data by the provision(s) of law involved."

During FY 2015, there were a total of thirteen (13) cases pending before Federal courts. Among these cases, there were eight (8) claims of violation of Title VII, seven (7) claims of violation of the Rehabilitation Act, five (5) claims of violation of the Age Discrimination in Employment Act, and one (1) claim of violation of 5 United States Code 2302, Prohibited Personnel Practices.

Of the thirteen (13) cases noted above, one (1) was settled during the reporting period. As part of that settlement, the agency agreed to pay a lump sum amount of \$17,000. This amount was paid directly by the agency and, therefore, no reimbursement to the Judgment Fund was required.

Another case involved a jury finding of retaliation against the agency. In that case, the jury awarded the plaintiff \$200,000 in compensatory damages and \$27,500 in back pay. The agency is awaiting a final order to be issued by the court on the amount of attorney's fees owed by the agency. A final decision on whether the agency will appeal the jury's finding in the case is pending.

Of the remaining eleven (11) cases, the agency prevailed on five (5) after filing dispositive motions with the court. An appeal on the dismissal of one (1) of those cases is pending. The agency is awaiting decisions on four (4) other cases in which it filed dispositive motions. Two (2) other cases are currently in pre-trial proceedings.

b. Reimbursement to the Judgment Fund

During FY 2015, the agency was not required to reimburse the Judgment Fund.

c. Disciplinary Actions (5 Code of Federal Regulations (C.F.R.) § 724.302 (a)(3) & (5))

There were no employees disciplined in FY 2015, in connection with any cases described in paragraph (a) above, or for any other conduct that is inconsistent with Federal Antidiscrimination Laws and Whistleblower Protection Laws or for conduct that constitutes prohibited personnel practices. Discipline as defined in § 724.102 means any one or a combination of the following actions: reprimand, suspension without pay, reduction in grade or pay, or removal.

d. Final Year-End Data Posted Under Section 301(c)(1)(B)

The final year-end data posted pursuant to section 301(c)(1)(B) of the No FEAR Act are included in Appendix 1. The final year-end data indicate that during FY 2015, there was a twenty-one percent (21%) increase in the number of formal complaints filed compared to FY 2014. In FY 2014, forty-eight (48) formal complaints of discrimination were filed with the agency. During FY 2015, there were fifty-eight (58) new administrative complaints of discrimination filed by fifty-seven (57) employees or applicants for employment. One (1) agency employee filed more than one (1) complaint during the reporting period. Based on a five (5) year trend analysis, the relatively low number of complaints filed in FY 14 was an anomaly that the agency attributed to FY 2014 being the only year within that trend analysis to report a

large separation of employees, including those employees participating in early out/buy-out retirement initiatives.

During FY 2015, EPA's Office of Civil Rights (OCR) saw a slight increase in the investigation timeframe by five percent (5%) (245.08 days in FY 2014 to 257.40 days in FY 2015). During FY 2015, EPA had one (1) finding of discrimination following an EEOC Administrative Hearing. FY 2015 complaint totals can be found in their entirety at Appendix 1 of this report.

e. Policy Description on Disciplinary Actions (5 C.F.R. § 724.302(a)(6))

The 2014 Agency EEO Policy addresses a variety of topics, including prohibition of discrimination in the workplace, and it includes a reminder to all employees that the agency will review any finding of discrimination and take disciplinary or corrective action, when appropriate. The EEO Policy, as well as information on addressing harassment and reasonable accommodation, was discussed in EPA's mandatory Successful Leaders Program for all new Agency supervisors. The 2014 EEO Policy can be found in its entirety at Appendix 3 of this report.

Additionally, EPA Order 3110.6B, *Adverse Actions*, EPA Order 3120.1B, *Conduct and Discipline*, EPA Order 3120.2, *Conduct and Discipline, Senior Executive Service*, and applicable collective bargaining agreements, provide guidance to managers about the type of disciplinary actions that may be taken, when appropriate, in response to a finding of discriminatory behavior or conduct. These actions may range from informal corrective actions, including oral admonishments and written warning, to more formal disciplinary actions such as a suspension without pay or removal to more formal disciplinary actions such as reprimands, suspensions without pay, reductions in grade or pay, up to removal.

EPA has an ongoing commitment to continue to include clear expectations about EEO in performance standards for managers. EPA has maintained revised Senior Executive Service standards that not only focus on preventing discrimination in hiring activities and promoting merit systems principles, but also require senior leaders to be personally involved in leading and implementing EEO and civil rights initiatives consistent with applicable laws. In addition, at the end of every performance cycle, the Director of OCR, Performance Review Board members, and Executive Review Board members evaluate management self-assessments to ensure that the respective rating is an appropriate reflection of the accomplishments listed.

f. No FEAR Act Training Plans (5 C.F.R. § 724.302 (a)(9))

No Fear Act training was not required for current agency employees in FY 2015. However, new employees were required to take the training within their first 90 days of onboarding. For FY 2016, agency employees are required to complete the No Fear training no later than December 31, 2016. The agency is committed to achieving a 100% completion rate for current employees for FY 2016.

IV. ANALYSIS OF TRENDS, CAUSAL ANALYSIS AND PRACTICAL KNOWLEDGE GAINED THROUGH EXPERIENCE (5 C.F.R. § 724.302 (a)(7))

At the conclusion of FY 2015, the bases of alleged discrimination most often raised were: (1) retaliation; (2) age; and (3) sex. The fifty-eight (58) EEO complaints filed in EPA in FY 2015 contained thirty (30) allegations of retaliation, twenty-eight (28) allegations of age discrimination, and twenty-seven (27) allegations of sex discrimination. While retaliation remains the top basis alleged in complaints filed, it should be noted that retaliation, age and sex are the top three (3) bases most frequently alleged in discrimination complaints throughout the entire Federal workforce.¹

The data show that the 0.36% of the agency workforce of 15,566 employees that have filed complaints falls well below the last reported government-wide average of 0.5% of the workforce that did.² EPA continues to stress training as a method for ultimately reducing the number of Federal court judgments, awards, and formal complaints, by having managers and supervisors continuously expand their knowledge of their responsibilities to promote equal employment opportunity. Additionally, EPA promotes training to help employees understand they also have a role in creating a workplace that promotes EEO.

EPA completed investigations for complaints pending during FY 2015 with an average processing time of 257 days with only two (2) investigations exceeding required time frames. As discussed in the FY 2012 No Fear Report, and implemented effectively during FY 2013 and 2014, the agency's revamped, streamlined investigative process has significantly improved the proportion of cases adjudicated within the applicable timeframes.



During FY 2015, EPA's OCR procedurally dismissed six (6) complaints. The average time to process a dismissal was ninety-nine (99) days, reflecting a 62% decrease from the FY 2014 processing average of 258 days pending prior to dismissal. Contributing factors include the addition of a second OCR attorney advisor.

V. ADJUSTMENTS TO BUDGET (5 C.F.R. § 724.302(a)(2)(ii))

As reported, during FY 2015, the agency was required to reimburse the Judgment Fund in connection with two (2) settled cases. One settlement involved a payment of \$650,000, while the

¹ As reported in FY 2014 Report of the Federal Workforce. <http://www.eeoc.gov/federal/reports/fsp2014/index.cfm>.

² As reported in FY 2014 Report of the Federal Workforce. <http://www.eeoc.gov/federal/reports/fsp2012/index.cfm>.

other settlement involved a total payment of \$670,000, \$170,000 of which was designated for the payment of attorneys' fees.

VI. ACTIONS PLANNED OR TAKEN TO IMPROVE COMPLAINT OR CIVIL RIGHTS PROGRAMS (5 C.F.R. § 724.302 (a)(7)(iv))

EPA's Civil Rights program has taken several steps to strengthen EPA's commitment to civil rights and equal employment opportunity in the workplace:

- EPA will continue to utilize the newly created, internal FAD management plan to strategically reduce the agency FAD docket.
- OCR is focused on improving processing time in accepting/dismissing complaints. In addition to imposing time elements in its EEO professionals' performance plans, the agency has two full-time attorneys among its staff in the civil rights office to review all formal complaints for acceptance/dismissal, write all dismissal decisions, and provide EEOC case law in its analyses to support its dismissal decisions.
- The EEO Training Committee continues to offer monthly training teleconferences to all EEO Counselors. The training has been presented by the EEO community, internal EPA partners and outside vendors. The timeliness and quality of EEO Counselors' Reports continue to show marked improvement and the utilization of and success rate for ADR have all significantly improved.
- EPA will increase its efforts to market the ADR program during the informal phase of EEO counseling, via centralized EEO intake. OCR anticipates that using ADR in this way will help reduce costs associated with adjudicating formal complaints. OCR will continue using the shared neutrals programs in regions at no cost to EPA. OCR will market and promote ADR as part of overall agency policy.

The agency is currently developing a formal ADR program that will focus on increasing its offer rate in the formal complaint process to attain an anticipated increase in its resolution rate. This program will continue to promote resolution at the lowest possible level by reengaging complainants and managers during a complaint's investigative stage and seek resolution prior to completing the investigation.

- OCR will continue to monitor and evaluate its current Standard Operation Procedures for investigations and its Statement of Work with the United States Postal Service, its investigative contractor. OCR will make adjustments to promote the efficiency of the investigative process with the goal of completing investigations within the 180 day requirement.

- To meet delineated goals, OCR will reevaluate its review and routing processes to determine the most efficient methods for obtaining legal sufficiency reviews while aggressively seeking to meet the regulatory requirement.
- Within the EPA, every member of the Senior Executive Service has had a performance standard related to equal employment opportunity and diversity in the workplace for several years. Senior managers must outline the specific related initiatives and actions they have personally undertaken and the results or effectiveness of those actions. At the end of every performance cycle, the Director of the Office of Civil Rights, Performance Review Board members, and Executive Review Board members review these managers' self-assessments to verify that the respective rating for the EEO performance standard is a reflection of the accomplishments listed.
- All EPA investigators and counselors received the required annual training and/or refresher training in accordance with Management Directive 110.
- EPA works to comply with orders from Administrative Judges in a timely manner, and this is a factor that is included in the performance standard of the Assistant Director, Office of Civil Rights, Employment Complaints Resolution Staff (ECRS). In addition, EPA has established systems to ensure that the agency initiates any monetary or other relief in a timely manner.
- OCR posts all No FEAR statistics on the OCR website on a quarterly basis.
- OCR management members make presentations during the monthly new employee orientations to ensure that all new employees are notified of the rights and remedies applicable to them under the employment discrimination and whistleblower protection laws. New employees are also reminded of their obligation to complete No Fear Training within ninety (90) days of onboarding.
- The Civil Rights Director and EEO Officials across the agency participate in briefings, listening sessions, and brainstorming sessions to discuss EEO with managers, senior leaders and employees in order to identify and address any potential barriers and specific action items that can continue to improve the agency's EEO and Civil Rights program.

APPENDIX 1

Equal Employment Opportunity Data Posted Pursuant to the No Fear Act:

EPA (and below)

For 4th Quarter 2015 for period ending September 30, 2015

Complaint Activity	Comparative Data					
	Previous Fiscal Year Data					2015Thru09-30
	2010	2011	2012	2013	2014	
Number of Complaints Filed	70	64	79	62	48	58
Number of Complainants	63	61	77	59	45	57
Repeat Filers	7	3	2	3	3	1

Complaints by Basis	Comparative Data					
	Previous Fiscal Year Data					2015Thru09-30
	2010	2011	2012	2013	2014	
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i>						
Race	39	25	40	22	23	25
Color	14	10	13	7	10	11
Religion	5	2	9	4	3	5

Reprisal	47	39	44	31	28	30
Sex	28	29	42	27	14	27
PDA	0	0	0	0	0	0
National Origin	14	10	13	12	10	11
Equal Pay Act	0	2	1	1	1	2
Age	28	21	37	22	22	28
Disability	21	24	25	19	18	18
Genetics	0	0	0	0	0	1
Non-EEO	0	1	8	7	6	6
Complaints by Issue	Comparative Data					
	Previous Fiscal Year Data					2015Thru09-30
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i>	2010	2011	2012	2013	2014	
Appointment/Hire	2	1	5	5	7	5
Assignment of Duties	18	12	12	5	5	16
Awards	6	2	5	0	3	4
Conversion to Full-time	0	0	2	0	0	0
Disciplinary Action						
Demotion	0	0	0	0	0	0
Reprimand	3	3	2	3	6	2
Suspension	2	3	2	6	4	0

Removal	0	1	2	0	3	2
Other	3	2	4	2	0	0
Duty Hours	1	3	3	2	0	0
Evaluation Appraisal	14	11	21	9	5	5
Examination/Test	0	1	0	0	0	0
Harassment						
Non-Sexual	35	30	32	22	19	28
Sexual	1	1	1	2	1	3
Medical Examination	0	0	0	0	0	0
Pay (Including Overtime)	3	4	4	1	0	1
Promotion/Non-Selection	24	18	26	10	8	5
Reassignment						
Denied	4	3	3	0	2	3
Directed	6	1	5	2	2	1
Reasonable Accommodation	2	8	7	9	3	4
Reinstatement	0	0	0	0	0	0
Retirement	0	0	2	1	2	1
Termination	4	9	5	4	1	1
Terms/Conditions of Employment	16	10	19	12	11	10
Time and Attendance	6	6	18	7	2	8
Training	6	4	11	2	6	6
Other	0	0	7	2	0	0

Processing Time	Comparative Data					
	Previous Fiscal Year Data					2015Thru09-30
	2010	2011	2012	2013	2014	
Complaints pending during fiscal year						
Average number of days in investigation	285.43	274.33	326.57	311.07	245.08	257.40
Average number of days in final action	310.67	449.95	409.47	198.44	289.65	321.81
Complaints pending during fiscal year where hearing was requested						
Average number of days in investigation	213.67	263.57	324.42	314.44	249.50	259.25
Average number of days in final action	0	0	326.57	35.00	12.00	36.00
Complaints pending during fiscal year where hearing was not requested						
Average number of days in investigation	339.25	312.00	328.83	306.58	233.87	253.36
Average number of days in final action	310.67	449.95	467.50	218.88	375.08	607.62
Complaints Dismissed by Agency	Comparative Data					
	Previous Fiscal Year Data					2015Thru09-30
	2010	2011	2012	2013	2014	
Total Complaints Dismissed by Agency	5	6	10	6	9	6

Average days pending prior to dismissal	53	441	212	123	258	99						
Complaints Withdrawn by Complainants												
Total Complaints Withdrawn by Complainants	2	3	12	19	3	8						
Total Final Agency Actions Finding Discrimination	Comparative Data											
	Previous Fiscal Year Data										2015Thru09-30	
	2010		2011		2012		2013		2014			
	#	%	#	%	#	%	#	%	#	%	#	%
Total Number Findings	0		0		0		0		1		1	
Without Hearing	0	0	0	0	0	0	0	0	0	0	0	0
With Hearing	0	0	0	0	0	0	0	0	1	100	1	100
Findings of Discrimination Rendered by Basis	Comparative Data											
	Previous Fiscal Year Data										2015Thru09-30	
Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints and findings.	2010		2011		2012		2013		2014			
	#	%	#	%	#	%	#	%	#	%	#	%
Total Number Findings	0		0		1		0		1		1	
Race	0	0	0	0	0	0	0	0	1	100	0	0
Color	0	0	0	0	0	0	0	0	0	0	0	0
Religion	0	0	0	0	0	0	0	0	0	0	0	0

Reprisal	0	0	0	0	1	100	0	0	0	0	0	0
Sex	0	0	0	0	0	0	0	0	1	100	0	0
PDA	0	0	0	0	0	0	0	0	0	0	0	0
National Origin	0	0	0	0	0	0	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0	0	0	0	0	0	0
Age	0	0	0	0	0	0	0	0	1	100	0	0
Disability	0	0	0	0	0	0	0	0	0	0	1	100
Genetics	0	0	0	0	0	0	0	0	0	0	0	0
Non-EEO	0	0	0	0	0	0	0	0	0	0	0	0
Findings After Hearing	0		0		0		0		1		1	
Race	0	0	0	0	0	0	0	0	1	100	0	0
Color	0	0	0	0	0	0	0	0	0	0	0	0
Religion	0	0	0	0	0	0	0	0	0	0	0	0
Reprisal	0	0	0	0	0	0	0	0	0	0	0	0
Sex	0	0	0	0	0	0	0	0	1	100	0	0
PDA	0	0	0	0	0	0	0	0	0	0	0	0
National Origin	0	0	0	0	0	0	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0	0	0	0	0	0	0
Age	0	0	0	0	0	0	0	0	1	100	0	0
Disability	0	0	0	0	0	0	0	0	0	0	1	100
Genetics	0	0	0	0	0	0	0	0	0	0	0	0

Non-EEO	0	0	0	0	0	0	0	0	0	0	0	0
Findings Without Hearing	0		0		1		0		0		0	
Race	0	0	0	0	0	0	0	0	0	0	0	0
Color	0	0	0	0	0	0	0	0	0	0	0	0
Religion	0	0	0	0	0	0	0	0	0	0	0	0
Reprisal	0	0	0	0	1	100	0	0	0	0	0	0
Sex	0	0	0	0	0	0	0	0	0	0	0	0
PDA	0	0	0	0	0	0	0	0	0	0	0	0
National Origin	0	0	0	0	0	0	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0	0	0	0	0	0	0
Age	0	0	0	0	0	0	0	0	0	0	0	0
Disability	0	0	0	0	0	0	0	0	0	0	0	0
Genetics	0	0	0	0	0	0	0	0	0	0	0	0
Non-EEO	0	0	0	0	0	0	0	0	0	0	0	0
Findings of Discrimination Rendered by Issue	Comparative Data											
	Previous Fiscal Year Data										2015Thru09-30	
	2010		2011		2012		2013		2014			
	#	%	#	%	#	%	#	%	#	%	#	%
Total Number Findings	0		0		1		0		1		1	
Appointment/Hire	0	0	0	0	0	0	0	0	1	100	0	0

Assignment of Duties	0	0	0	0	0	0	0	0	0	0	0	0
Awards	0	0	0	0	0	0	0	0	0	0	0	0
Conversion to Full-time	0	0	0	0	0	0	0	0	0	0	0	0
Disciplinary Action												
Demotion	0	0	0	0	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0	0	0	0	0	0	0
Suspension	0	0	0	0	0	0	0	0	0	0	0	0
Removal	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0	0	0	0	0	1	100
Evaluation Appraisal	0	0	0	0	0	0	0	0	0	0	0	0
Examination/Test	0	0	0	0	0	0	0	0	0	0	0	0
Harassment												
Non-Sexual	0	0	0	0	1	100	0	0	0	0	0	0
Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0	0	0	0	0	0	0
Pay (Including Overtime)	0	0	0	0	0	0	0	0	0	0	0	0
Promotion/Non-Selection	0	0	0	0	0	0	0	0	0	0	0	0
Reassignment												

Denied	0	0	0	0	0	0	0	0	0	0	0	0
Directed	0	0	0	0	0	0	0	0	0	0	0	0
Reasonable Accommodation	0	0	0	0	0	0	0	0	0	0	1	100
Reinstatement	0	0	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	0	0	0	0	0	0
Termination	0	0	0	0	0	0	0	0	0	0	0	0
Terms/Conditions of Employment	0	0	0	0	0	0	0	0	0	0	0	0
Time and Attendance	0	0	0	0	0	0	0	0	0	0	0	0
Training	0	0	0	0	0	0	0	0	0	0	0	0
Other - User Defined	0	0	0	0	0	0	0	0	0	0	0	0
Findings After Hearing	0		0		0		0		1		1	
Appointment/Hire	0	0	0	0	0	0	0	0	1	100	0	0
Assignment of Duties	0	0	0	0	0	0	0	0	0	0	0	0
Awards	0	0	0	0	0	0	0	0	0	0	0	0
Conversion to Full-time	0	0	0	0	0	0	0	0	0	0	0	0
Disciplinary Action												
Demotion	0	0	0	0	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0	0	0	0	0	0	0

Suspension	0	0	0	0	0	0	0	0	0	0	0	0
Removal	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0	0	0	0	0	1	100
Evaluation Appraisal	0	0	0	0	0	0	0	0	0	0	0	0
Examination/Test	0	0	0	0	0	0	0	0	0	0	0	0
Harassment												
Non-Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0	0	0	0	0	0	0
Pay (Including Overtime)	0	0	0	0	0	0	0	0	0	0	0	0
Promotion/Non-Selection	0	0	0	0	0	0	0	0	0	0	0	0
Reassignment												
Denied	0	0	0	0	0	0	0	0	0	0	0	0
Directed	0	0	0	0	0	0	0	0	0	0	0	0
Reasonable Accommodation	0	0	0	0	0	0	0	0	0	0	1	100
Reinstatement	0	0	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	0	0	0	0	0	0
Termination	0	0	0	0	0	0	0	0	0	0	0	0

Terms/Conditions of Employment	0	0	0	0	0	0	0	0	0	0	0	0
Time and Attendance	0	0	0	0	0	0	0	0	0	0	0	0
Training	0	0	0	0	0	0	0	0	0	0	0	0
Other - User Defined	0	0	0	0	0	0	0	0	0	0	0	0
Findings Without Hearing	0		0		1		0		0		0	
Appointment/Hire	0	0	0	0	0	0	0	0	0	0	0	0
Assignment of Duties	0	0	0	0	0	0	0	0	0	0	0	0
Awards	0	0	0	0	0	0	0	0	0	0	0	0
Conversion to Full-time	0	0	0	0	0	0	0	0	0	0	0	0
Disciplinary Action												
Demotion	0	0	0	0	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0	0	0	0	0	0	0
Suspension	0	0	0	0	0	0	0	0	0	0	0	0
Removal	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0	0	0	0	0	0	0
Evaluation Appraisal	0	0	0	0	0	0	0	0	0	0	0	0
Examination/Test	0	0	0	0	0	0	0	0	0	0	0	0

Harassment												
Non-Sexual	0	0	0	0	1	100	0	0	0	0	0	0
Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0	0	0	0	0	0	0
Pay (Including Overtime)	0	0	0	0	0	0	0	0	0	0	0	0
Promotion/Non-Selection	0	0	0	0	0	0	0	0	0	0	0	0
Reassignment												
Denied	0	0	0	0	0	0	0	0	0	0	0	0
Directed	0	0	0	0	0	0	0	0	0	0	0	0
Reasonable Accommodation	0	0	0	0	0	0	0	0	0	0	0	0
Reinstatement	0	0	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	0	0	0	0	0	0
Termination	0	0	0	0	0	0	0	0	0	0	0	0
Terms/Conditions of Employment	0	0	0	0	0	0	0	0	0	0	0	0
Time and Attendance	0	0	0	0	0	0	0	0	0	0	0	0
Training	0	0	0	0	0	0	0	0	0	0	0	0
Other - User Defined	0	0	0	0	0	0	0	0	0	0	0	0

Pending Complaints Filed in Previous Fiscal Years by Status	Comparative Data					
	Previous Fiscal Year Data					2015Thru09- 30
	2010	2011	2012	2013	2014	
Total complaints from previous Fiscal Years	52	61	59	87	87	87
Total Complainants	47	48	52	79	82	78
Number complaints pending						
Investigation	39	51	20	11	3	1
ROI issued, pending Complainant's action	0	0	3	3	0	0
Hearing	25	36	38	59	65	68
Final Agency Action	37	19	12	22	20	20
Appeal with EEOC Office of Federal Operations	1	4	8	15	13	14
Complaint Investigations	Comparative Data					
	Previous Fiscal Year Data					2015Thru09- 30
	2010	2011	2012	2013	2014	
Pending Complaints Where Investigations Exceed Required Time Frames	69	70	31	22	3	2

APPENDIX 2



THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

DEC 15 2014

MEMORANDUM

SUBJECT: Anti-Harassment Policy Statement

FROM: Gina McCarthy

A handwritten signature in black ink, appearing to read "Gina McCarthy", is written over the printed name.

TO: All Employees

I want to reaffirm the U.S. Environmental Protection Agency's commitment to prohibit harassment of any kind, as clearly stated in our agency's anti-harassment policy. Harassment is unlawful when it is directed at an individual because of a lawfully protected basis and is sufficiently severe or pervasive that it creates a hostile work environment or takes the form of a tangible employment action. It is EPA policy to ensure that appropriate measures are implemented to prevent harassment, either sexual or nonsexual, in the workplace and to correct harassing conduct before it becomes severe or pervasive. EPA policy also strictly prohibits any retaliation against an employee who reports a concern about workplace harassment or assists in any inquiry about such a report.

For the purposes of this policy, unlawful harassment is defined as any unwelcome verbal or physical conduct based on race; color; sex, including pregnancy and gender identity/expression; national origin; religion; age; prior protected Equal Employment Opportunity activity; protected genetic information; sexual orientation or status as a parent when:

- the behavior can reasonably be considered to adversely affect the work environment; or
- an employment decision affecting the employee is based upon the employee's acceptance or rejection of such conduct.

Sexual harassment can be either a form of harassment based on a person's sex that need not involve conduct of a sexual nature or harassment involving any unwelcome sexual advance, request for sexual favors or other verbal or physical conduct of a sexual nature when:

- submission to such conduct is made explicitly or implicitly a term or condition of an employee's job, pay or career;
- submission to or rejection of such conduct by an employee is used as a basis for career or employment decisions affecting that employee; or
- such conduct has the purpose or effect of unreasonably interfering with an employee's performance or creates an intimidating, hostile or offensive environment.

Sexual harassment need not involve members of the opposite sex and can be perpetrated by and against members of either sex.

Examples of workplace harassment include:

- Oral or written communications that contain offensive name calling, jokes, slurs, negative stereotyping, hostility or threats. This includes comments or jokes that are distasteful or targeted at individuals or members of the lawfully protected bases set forth above.
- Nonverbal conduct, such as staring, leering and giving inappropriate gifts.
- Physical conduct, such as assault or unwanted touching.
- Visual images, such as derogatory or offensive pictures, cartoons or drawings. Such prohibited images include those in hard copy or electronic form.

The EPA does not permit harassment by or against anyone in the workplace. This includes any employee, applicant for EPA employment, grantee, contractor, Senior Environmental Employment enrollee or Federal Advisory Committee Act member. Workplace harassment should be reported immediately by the affected person to a first-line supervisor, a higher-level supervisor or manager in her or his chain of command, the Office of Inspector General or Labor and Employee Relations staff, as appropriate. Supervisors, in consultation with their human resources or legal offices, must conduct prompt, thorough and impartial inquiries.

If necessary and to the extent possible, measures must be taken to safeguard the anonymity of employees who file complaints. If management, in consultation with legal counsel, determines that harassment has occurred, it must be corrected as soon as possible. Harassing conduct by EPA employees need not rise to the level of unlawful harassment for it to constitute misconduct subject to corrective or disciplinary action.

In addition, EPA employees or applicants for employment may also use the complaint process established by the U.S. Equal Employment Opportunity Commission to file a complaint of harassment based on race, color, sex, religion, national origin, age, disability, prior protected EEO activity and protected genetic information for individual redress. To invoke that process, EPA employees and applicants must contact an EEO counselor within 45 days of an alleged incident of harassment. Reporting harassment to a supervisor in accordance with the previous paragraph does not satisfy this requirement and does not invoke the EEOC's process. EPA employees or applicants for employment may also report harassment based on sexual orientation and status as a parent to the EPA Office of Civil Rights.

Should you have any questions or need additional information about this policy, please contact the EPA Office of Human Resources at (202) 564-4646 or the EPA Office of Civil Rights at (202) 564-7272. Additional resources are available by visiting intranet.epa.gov/civilrights/lawsandstatus.htm.

APPENDIX 3



THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON D.C. 20460

DEC - 3 2014

MEMORANDUM

SUBJECT: 2014 Equal Employment Opportunity Policy Statement

FROM: Gina McCarthy 

TO: All Employees

I am proud to reaffirm the U.S. Environmental Protection Agency's commitment to equal employment opportunity in the workplace. Fostering a diverse and inclusive work environment through equal employment is essential to our work and our service to the American people.

The EPA cannot and will not tolerate discrimination based on race; color; religion; sex, including pregnancy, sex stereotyping, gender identity or gender expression; national origin; sexual orientation; physical or mental disability; age; protected genetic information; status as a parent; marital status; political affiliation; or retaliation based on previous EEO activity. In addition, the EPA will not tolerate any type of harassment – either sexual or nonsexual – of any employee or applicant for employment. Employment decisions, including those related to hiring, training or awards, must be made in accordance with the merit-system principles in 5 U.S.C. § 2301.

I expect our management team to continue to provide first-class leadership in support of equal-employment opportunities. I ask that EPA managers and employees take responsibility for treating each other with dignity and respect, reporting discriminatory conduct and preventing all types of discrimination, including harassment.

The EPA promotes the use of alternative-dispute-resolution methods to resolve workplace disputes or EEO complaints. Managers are reminded that their participation in agency-approved alternative-dispute-resolution efforts to resolve employee EEO complaints is required, absent extraordinary circumstances as determined by the Office of Civil Rights' director or designee.

Any employee, manager or applicant for employment who believes he or she has been subjected to discrimination has a right to seek redress within 45 calendar days of the alleged discriminatory event by contacting the EPA's Office of Civil Rights Employment Complaints Resolution staff at (202) 564-7272 or an EEO officer at the regional or laboratory level. The agency will review any finding of discrimination and, when necessary, take appropriate disciplinary or corrective action.

A professional, productive and inclusive workplace is essential to the EPA's mission to protect human health and the environment. Unlawful discrimination in the workplace, including retaliation and harassment, undermines the achievement of our agency's mission. I appreciate your shared commitment to equal opportunity at the EPA and look forward to continuing our work together.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY CHARTER

ENVIRONMENTAL FINANCIAL ADVISORY BOARD

1. Committee's Official Designation (Title):

Environmental Financial Advisory Board

2. Authority:

This charter renews the Environmental Financial Advisory Board (EFAB) in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2 and relevant Agency policies. The EFAB is in the public interest and supports EPA in performing its duties and responsibilities.

3. Objectives and Scope of Activities:

There are many critical environmental financing issues facing our nation. Environmental legislation places significant additional resource requirements on all levels of government, increasing their infrastructure and administrative costs. At the same time, limited budgets and economic challenges have constrained traditional sources of capital. Growing needs and expectations for environmental protection, as well as increasing demands in all municipal service areas, make it difficult for state and local governments to find the resources to meet their needs. The resulting strain on the public sector challenges the quality and delivery of environmental services.

The major objectives are to provide policy advice and recommendations on:

- a. Reducing the cost of financing sustainable environmental facilities, discouraging polluting behavior, and encouraging stewardship of natural resources;
- b. Creating incentives to increase private investment in the provision of environmental services and removing or reducing constraints on private involvement imposed by current regulations;
- c. Developing new and innovative environmental financing approaches and supporting and encouraging the use of cost-effective existing approaches;
- d. Identifying approaches specifically targeted to small community financing;

- e. Assessing government strategies for implementing public-private partnerships, including privatization and operations and maintenance issues, and other alternative financing mechanisms;
- f. Improving governmental principles of accounting and disclosure standards to help improve sustainability of environmental programs;
- g. Increasing the capacity of state and local governments to carry out their respective environmental programs under current Federal tax laws;
- h. Increasing the total investment in environmental protection and stewardship of public and private environmental resources to help ease the environmental financing challenge facing our nation; and
- i. Removing barriers and increasing opportunities for the U.S. financial services and environmental goods and services industries in other nations.

4. Description of Committee's Duties:

The duties of the EFAB are solely to provide advice to EPA.

5. Official(s) to Whom the Committee Reports:

The EFAB will submit advice and recommendations and report to the EPA Administrator, through the Office of Water.

6. Agency Responsible for Providing the Necessary Support:

EPA will be responsible for financial and administrative support. Within EPA, this support will be provided by the Office of Water.

7. Estimated Annual Operating Costs and Work Years:

The estimated annual operating cost of the EFAB is \$400,000 which includes 4 work years of support.

8. Designated Federal Officer:

A full-time or permanent part-time employee of EPA will be appointed as the DFO. The DFO or a designee will be present at all meetings of the advisory committee and subcommittees. Each meeting will be conducted in accordance with an agenda approved in advance by the DFO. The DFO is authorized to adjourn any meeting when he or she determines it is in the public interest to do so, and will chair meetings when directed to do so by the official to whom the committee reports.

9. Estimated Number and Frequency of Meetings:

EFAB expects to meet approximately two (2) times a year. Meetings may occur approximately once every six (6) months or as needed and approved by the Designated Federal Officer (DFO). EPA may pay travel and per diem expenses when determined necessary and appropriate.

As required by FACA, the EFAB will hold open meetings unless the Administrator determines that a meeting or a portion of a meeting may be closed to the public in accordance with 5 U.S.C. 552b(c). Interested persons may attend meetings, appear before the committee as time permits, and file comments with the EFAB.

10. Duration and Termination:

EFAB will be examined annually and will exist until the EPA determines the committee is no longer needed. This charter will be in effect for two years from the date it is filed with Congress. After the initial two-year period, the charter may be renewed as authorized in accordance with Section 14 of FACA.

11. Member Composition:

The EFAB will be composed of approximately thirty five (35) members who will serve as Representative members of non-federal interests, Regular Government Employees (RGEs), or Special Government Employees (SGEs). Representative members are selected to represent the points of view held by specific organizations, associations, or classes of individuals. In selecting members, EPA will consider candidates from all levels of government, the finance, banking, and legal communities; business and industry; and local, national and non-governmental organizations.

12. Subgroups:

EPA, or the EFAB with EPA's approval, may form subcommittees or workgroups for any purpose consistent with this charter. Such subcommittees or workgroups may not work independently of the chartered committee and must report their recommendations and advice to the chartered EFAB for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered committee nor can they report directly to the Agency.

13. Recordkeeping:

The records of the committee, formally and informally established subcommittees, or other subgroups of the committee, will be handled in accordance with NARA General Records Schedule 6.2 and EPA Records Schedule 181 or other approved agency records disposition schedule. Subject to the Freedom of Information Act, 5 U.S.C. 552, these records will be available for public inspection and copying, in accordance with the Federal Advisory Committee Act.

March 3, 2016

Agency Approval Date

March 3, 2016

GSA Consultation Date

March 7, 2016

Date Filed with Congress

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

EPA BOARD OF SCIENTIFIC COUNSELORS

1. Committee's Official Designation (Title):

EPA Board of Scientific Counselors

2. Authority:

The EPA Board of Scientific Counselors (BOSC) charter is renewed in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2. The BOSC is in the public interest and supports the U.S. Environmental Protection Agency (EPA) in performing its duties and responsibilities.

3. Objectives and Scope of Activities:

The BOSC will provide advice and recommendations on all aspects (technical and management) of the Office of Research and Development's (ORD) research program. As appropriate, the BOSC will consult and coordinate its work with the Science Advisory Board.

The major objectives are to provide advice and recommendations on:

- a. ORD's research programs and research management practices and actions to improve research program quality, relevance, and performance, as well as program structure, scientific leadership, research coordination, communication, and outcomes;
- b. ORD's program development, progress, and research program balance, which may include evaluation of ORD's Strategic Research Action Plans and Cross-cutting Research Roadmaps;
- c. Use of peer review within ORD to sustain and enhance the quality of science in EPA;
- d. Scientific and management issues specific to ORD Offices, National Laboratories, and Centers; and
- e. ORD's human resources planning, such as scientist career development and rotational assignment programs, and the appropriate scope and design of training programs for environmental research professionals.

4. Description of Committees Duties:

The duties of the BOSC are solely to provide advice to EPA.

5. Official(s) to Whom the Committee Reports:

The BOSC will submit advice and recommendations and report to the EPA Administrator, through the Assistant Administrator for the Office of Research and Development.

6. Agency Responsible for Providing the Necessary Support:

The EPA will be responsible for financial and administrative support. Within EPA, this support will be provided by the Office of Research and Development.

7. Estimated Annual Operating Costs and Work Years:

The estimated annual operating cost of the BOSC is \$627,500 which includes 2.0 person-years of support.

8. Designated Federal Officer:

A full-time or permanent part-time employee of EPA will be appointed as the Designated Federal Officer (DFO). The DFO or a designee will be present at all meetings of the advisory committee and subcommittees. Each meeting will be conducted in accordance with an agenda approved in advance by the DFO. The DFO is authorized to adjourn any meeting when he or she determines it is in the public interest to do so and will chair meetings when directed to do so by the official to whom the committee reports.

9. Estimated Number and Frequency of Meetings:

The BOSC expects to meet approximately two (2) to three (3) times a year. Meetings may occur approximately once every four (4) to six (6) months, or as needed and approved by the DFO. EPA may pay travel and per diem expenses when determined necessary and appropriate.

As required by FACA, the BOSC will hold open meetings unless the EPA Administrator determines that a meeting or a portion of a meeting may be closed to the public in accordance with 5 U.S.C. 552b(c). Interested persons may attend meetings, appear before the committee as time permits, and file comments with the BOSC.

10. Duration and Termination:

The BOSC will be examined annually and will exist until the EPA determines the committee is no longer needed. This charter will be in effect for two years from the date it is filed with Congress. After the initial two-year period, the charter may be renewed as authorized in accordance with Section 14 of FACA.

11. Member Composition:

The BOSC will be composed of approximately twenty (20) members who will serve as Special Government Employees (SGEs). In selecting members, EPA will consider candidates from the environmental scientific and technical fields, human health care professions, academia, industry, public and private research institutes and organizations, and other relevant interest areas.

12. Subgroups:

The EPA, or the BOSC with EPA approval, may form BOSC subcommittees or workgroups for any purpose consistent with this charter. Such subcommittees or workgroups may not work independently of the chartered committee and must report their recommendations and advice to the chartered BOSC for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered committee nor can they report directly to the Agency.

13. Recordkeeping:

The records of the committee, formally and informally established subcommittees, or other subgroups of the committee, will be handled in accordance with NARA General Records Schedule 6.2 and EPA Records Schedule 1024 or other approved agency records disposition schedule. Subject to the Freedom of Information Act, 5 U.S.C. 552, these records will be available for public inspection and copying, in accordance with the Federal Advisory Committee Act.

April 22, 2016
Agency Approval Date

April 27, 2016
GSA Consultation Date

May 9, 2016
Date Filed with Congress

5. Agency or Official to Whom the Committee Reports:

The CAAAC will submit advice and recommendations and report to the EPA Administrator, through the Office of Air and Radiation.

6. Support:

The EPA will be responsible for financial and administrative support. Within the EPA, this support will be provided by the Office of Air and Radiation.

7. Estimated Annual Operating Costs and Staff Years:

The estimated annual operating cost of the CAAAC is \$353,260, which includes 1.9 person-years of support.

8. Designated Federal Officer:

A full-time or permanent part-time employee of EPA will be appointed as the Designated Federal Officer (DFO). The DFO or a designee will be present at all meetings of the advisory committee and subcommittees. Each meeting will be conducted in accordance with an agenda approved in advance by the DFO. The DFO is authorized to adjourn any meeting when he or she determines it is in the public interest to do so, and will chair meetings when directed to do so by the official to whom the committee reports.

9. Estimated Number and Frequency of Meetings:

The CAAAC expects to meet approximately two times per year. Meetings may occur approximately once every six months or as needed and approved by the DFO. EPA may pay travel and per diem expenses when determined necessary and appropriate.

As required by FACA, the CAAAC will hold open meetings unless the EPA Administrator determines that a meeting or a portion of a meeting may be closed to the public in accordance with 5 U.S.C. 552b(c). Interested persons may attend meetings, appear before the committee as time permits, and file comments with the CAAAC.

10. Duration and Termination:

The CAAAC will be examined annually and will exist until the EPA determines the committee is no longer needed. This charter will be in effect for two years from the date it is filed with Congress. After this period, the charter may be renewed as authorized in accordance with Section 14 of FACA.

11. Membership and Designation:

The CAAAC will be composed of approximately forty (40) members who will generally serve as Representative members of non-federal interests. If needed, members may be appointed to serve as Regular Government Employees (RGEs), or Special Government Employees (SGEs).

Representative members are selected to represent the points of view held by organizations, associations, or classes of individuals. In selecting members, EPA will consider candidates from business and industry, academic institutions, State, local and tribal governments, EPA officials, unions, public interest groups, environmental organizations and service groups. The Assistant Administrator for the Office of Air and Radiation will serve as the Chair.

12. Subcommittees:

EPA, or the CAAAC with EPA's approval, may form CAAAC subcommittees or workgroups for any purpose consistent with this charter. Such subcommittees or workgroups may not work independently of the chartered committee and must report their recommendations and advice to the chartered CAAAC for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered committee nor can they report directly to the Agency.

13. Recordkeeping:

The records of the committee, formally and informally established subcommittees, or other subgroups of the committee, will be handled in accordance with NARA General Records Schedule 6.2 and EPA Records Schedule 1024 or other approved agency records disposition schedule. Subject to the Freedom of Information Act, 5 U.S.C. 552, these records will be available for public inspection and copying, in accordance with the Federal Advisory Committee Act.

September 16, 2016

Agency Approval Date

September 27, 2016

GSA Consultation Date

October 24, 2016

Date Filed with Congress

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY CHARTER

NATIONAL ENVIRONMENTAL EDUCATION ADVISORY COUNCIL

1. Committee's Official Designation (Title):

National Environmental Education Advisory Council

2. Authority:

This charter renews the National Environmental Education Advisory Council (NEEAC) in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2. The NEEAC was created by Congress to advise, consult with, and make recommendations to the Administrator of the Environmental Protection Agency (EPA) on matters related to activities, functions and policies of EPA under the National Environmental Education Act (the Act). 20 U.S.C. § 5508(b).

3. Objectives and Scope of Activities:

The NEEAC will provide advice and recommendations to the Administrator on environmental education matters as required by the Act, including preparation of a biennial report to Congress assessing environmental education in the United States. With respect to such matters, the Council shall be the exclusive advisory entity for the Administrator. The Council may exchange information with other Advisory Councils established by the Administrator.

4. Description of Duties:

The sole duty of the NEEAC is to provide advice to EPA. The NEEAC will provide advice and recommendations on matters as required by the Act, including:

- a. EPA's solicitation, review, and selection processes for environmental education training and grant programs
- b. The merits of individual proposals to operate the § 5 training program and the § 6 grant program, as requested by EPA
- c. Nominations of § 8 Environmental Award recipients
- d. Other environmental education issues, including matters relating to activities, functions, and policies of EPA under the Act

- e. A biennial report to Congress as required by § 9(d)(1), which will:
- (A) describe and assess the extent and quality of environmental education in the Nation;
 - (B) provide a general description of the activities conducted pursuant to this Act and related authorities over the previous 2-year period;
 - (C) summarize major obstacles to improving environmental education (including environmental education programs relating to national parks and wildlife refuges) and make recommendations for addressing such obstacles;
 - (D) identify personnel skills, education, and training needed to respond to current and anticipated environmental problems and make recommendations for actions to assure sufficient educational and training opportunities in these professions; and
 - (E) describe and assess the extent and quality of environmental education programs available to senior Americans and make recommendations thereon; describe the various Federal agency programs to further senior environmental education; and evaluate and make recommendations as to how such educational apparatuses could best be coordinated with nonprofit senior organizations across the Nation, and environmental education institutions and organizations now in existence.

5. Agency or Official to Whom the Committee Reports:

The NEEAC will submit advice and recommendations and report to the EPA Administrator through the Associate Administrator for the Office of Public Engagement and Environmental Education (OPEEE).

6. Support:

EPA will be responsible for financial and administrative support. Within EPA, this support will be provided by the Office of Environmental Education, within the Office of Public Engagement and Environmental Education (OPEEE), under the Office of the Administrator.

7. Estimated Annual Operating Costs and Staff Years:

The estimated annual operating cost of the NEEAC is \$207,000, which includes 0.7 person-years of support.

8. Designated Federal Officer:

A full-time or permanent part-time employee of EPA will be appointed as the Designated Federal Officer (DFO). The DFO or a designee will be present at all meetings of the advisory committee and subcommittees. Each meeting will be conducted in accordance with an agenda approved in advance by the DFO. The DFO is authorized to adjourn any meeting when he or she determines it is in the public interest to do so, and will chair meetings when directed to do so by the official to whom the committee reports.

9. Estimated Number and Frequency of Meetings:

The NEEAC expects to meet approximately one (1) to two (2) times a year in face to face meetings and approximately nine (9) times a year by teleconference, subject to the availability of appropriations. EPA will pay travel and per diem expenses when determined necessary and appropriate.

As required by FACA, the NEEAC will hold open meetings unless the EPA Administrator determines that a meeting or a portion of a meeting may be closed to the public in accordance with 5 U.S.C. 552b(c). Interested persons may attend meetings, appear before the committee as time permits, and file comments with the NEEAC.

10. Duration and Termination:

The Act specifically exempts the NEEAC from section 14(a) of the Federal Advisory Committee Act relating to termination 20 U.S.C. § 5508(b) (6). The NEEAC, however, will file a new charter every two years.

11. Membership and Designation:

The NEEAC will be composed of eleven (11) members appointed by the EPA Administrator, or designee, after consultation with the Secretary of the U.S. Department of Education. Members will serve as Special Government Employees (SGE), however, the conflict of interest provision at 18 U.S.C. § 208(a) does not apply to members' participation in particular matters which affect the financial interests of their employers. 20 U.S.C. § 5508(b) (2). SGE pay rates will be determined by EPA's Administrator, but may not exceed the daily equivalent of the annual rate for a GS-18 Federal employee.

As required by the Act, the membership of the NEEAC will consist of: two members representing primary and secondary education (including one classroom teacher); two members representing colleges and universities; two members representing not-for-profit organizations involved in environmental education; two members representing State departments of education and natural resources; two members representing business and industry; and one member representing senior Americans. In addition, a representative of the Secretary of Education will serve as an ex officio member and a representative of the National Environmental Education and Training Foundation may serve as an advisor to the NEEAC.

As required by the Act, the NEEAC membership will represent the various geographic regions of the country and will have minority representation. 20 U.S.C. § 5508(b) (3). The professional backgrounds of the members will include scientific, policy, and other appropriate disciplines.

12. Subcommittees:

EPA, or the NEEAC with EPA's approval, may form NEEAC subcommittees or workgroups for any purpose consistent with this charter. Such subcommittees or workgroups may not work independently of the chartered committee and must report their recommendations and advice to the chartered NEEAC for full deliberation and discussion. Subcommittees or workgroups have

no authority to make decisions on behalf of the chartered committee nor can they report directly to the Agency.

13. Recordkeeping:

The records of the committee, formally and informally established subcommittees, or other subgroups of the committee, will be handled in accordance with NARA General Records Schedule 6.2 and EPA Records Schedule 1024 or other approved agency records disposition schedule. Subject to the Freedom of Information Act, 5 U.S.C. 552, these records will be available for public inspection and copying, in accordance with the Federal Advisory Committee Act.

September 30, 2016
Agency Approval Date

November 7, 2016
Date Filed with Congress

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY CHARTER

NATIONAL DRINKING WATER ADVISORY COUNCIL

1. **Committee's Official Designation (Title):**

National Drinking Water Advisory Council

2. **Authority:**

This charter renews the National Drinking Water Advisory Council (NDWAC or Council) in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App.2. NDWAC is in the public interest and supports the Environmental Protection Agency (EPA or Agency) in performing its duties and responsibilities. The Council was created by Congress on December 16, 1974, as part of the Safe Drinking Water Act of 1974, P.L. 93-523, 42 U.S.C. § 300j-5.

3. **Objectives and Scope of Activities:**

NDWAC will provide advice, information, and recommendations on matters related to activities, functions, policies, and regulations of the EPA under the Safe Drinking Water Act.

4. **Description of Duties:**

The duties of NDWAC are to provide advice to EPA on Safe Drinking Water Act matters and also include:

- a. Providing practical and independent advice on matters and policies related to drinking water quality and public health protection.
- b. Maintaining an awareness of developing issues and problems in the drinking water area and advising EPA on emerging issues.
- c. Advising on regulations and guidance as required by the Safe Drinking Water Act.
- d. Recommending policies with respect to the promulgation of drinking water standards.
- e. Recommending special studies and research.
- f. Assisting in identifying emerging environmental or health problems related to potentially hazardous constituents in drinking water.
- g. Proposing actions to encourage cooperation and communication between EPA

and other governmental agencies, interest groups, the general public, and technical associations and organizations on drinking water quality.

- h. Analyzing sustainable infrastructure issues with special emphasis on the security of the nation's drinking water systems.

5. Agency or Official to Whom the Committee Reports:

The NDWAC will report its advice and recommendations to the EPA Administrator.

6. Support:

EPA will be responsible for financial and administrative support. Within EPA, this support will be provided by the Office of Water.

7. Estimated Annual Operating Costs and Staff Years:

The estimated annual operating cost of NDWAC is \$252,000, which includes approximately 1.0 person-years of support.

8. Designated Federal Officer:

A full-time or permanent part-time employee of EPA will be appointed as the Designated Federal Official (DFO). The DFO or a designee will be present at all meetings of the advisory committee and subcommittees. Each meeting will be conducted in accordance with an agenda approved in advance by the DFO. The DFO is authorized to adjourn any meeting when he or she determines it is in the public interest to do so and will chair meetings when directed to do so by the official to whom the committee reports.

9. Estimated Number and Frequency of Meetings:

NDWAC expects to meet approximately two (2) times a year. Meetings are expected to occur approximately once every six (6) months or as needed and approved by the Designated Federal Officer (DFO). As required by the Safe Drinking Water Act, EPA will pay members' travel and per diem expenses when members are "away from their homes or regular places of business in the performance of services for the Council." 42 U.S.C. § 300j-5(c).

As required by FACA, the Council will hold open meetings unless the EPA Administrator determines that a meeting or a portion of a meeting may be closed to the public in accordance with 5 U.S.C. 552b(c). Interested persons may attend meetings, appear before the committee as time permits, and file comments with the NDWAC.

10. Duration and Termination:

As provided in the Safe Drinking Water Act, "section 14(a) of the Federal Advisory Committee Act (relating to termination) shall not apply to the Council." 42 U.S.C. § 300j-5(d). However, the Charter is subject to the renewal process upon the expiration of each successive two-year period following the date of enactment of the Act establishing this Council.

11. Membership and Designation:

NDWAC will be composed of fifteen (15) members who will serve as Special Government Employees (SGE). Members will be appointed by EPA's Administrator after consultation with the Secretary of the Department of Health and Human Services. As required by the Safe Drinking Water Act, five (5) members will be appointed from appropriate State and local agencies concerned with public water supply and public health protection; five (5) members will be appointed from private organizations or groups demonstrating an active interest in the field of water hygiene and public water supply, of which two (2) members will represent small, rural public water systems; and five (5) members will be appointed from the general public. 42 U.S.C. § 300j-5(a).

In addition, up to five (5) Federal employees will be appointed as technical advisors to the Council. The technical advisors may include individuals representing the EPA's Science Advisory Board (SAB), the Centers for Disease Control and Prevention's (CDC) National Center for Environmental Health and National Center for Infectious Diseases, and such additional Federal officials as the EPA deems necessary for the NDWAC to carry out its function. Technical advisors may participate in Council discussions, but not Council deliberations.

12. Subcommittees:

EPA, or NDWAC with EPA's approval, may form NDWAC subcommittees or working groups for any purpose consistent with this charter. Such subcommittees or working groups may not work independently of the chartered committee and must report their recommendations and advice to the chartered Council for full deliberation and discussion. Subcommittees or working groups have no authority to make decisions on behalf of the chartered Council and they cannot report directly to the Agency.

13. Recordkeeping:

The records of the committee, formally and informally established subcommittees, or other subgroups of the committee, will be handled in accordance with NARA General Records Schedule 6.2 and EPA Records Schedule 1024 or other approved agency records disposition schedule. Subject to the Freedom of Information Act, 5 U.S.C. 552, these records will be available for public inspection and copying, in accordance with the Federal Advisory Committee Act.

November 8, 2016

Agency Approval Date

December 9, 2016

Date Filed with Congress

**U.S. ENVIRONMENTAL
PROTECTION AGENCY**

Fiscal Year 2016

Annual Report to Congress
Pursuant to the
Notification and Federal Employee
Antidiscrimination and Retaliation
Act of 2002

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I. EXECUTIVE SUMMARY

The U.S. Environmental Protection Agency (EPA or Agency) provides its Annual Report to Congress as required by Section 203 of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act), Public Law 107-174. As required, this report includes information related to the number of discrimination and retaliation cases in Federal court pending or resolved in fiscal year (FY) 2016 and, their disposition; reimbursement(s) to the Judgment Fund; and the number of employees disciplined for discrimination, retaliation and harassment, and the nature of the disciplinary action taken.

During FY 2016, there were a total of 11 discrimination and retaliation cases pending before Federal courts. Among these cases, there were eight (8) claims of violation of Title VII of the Civils Rights act of 1964, three (3) claims of violation of the Rehabilitation Act of 1973, and three (3) claims of violation of the Age Discrimination in Employment Act.¹

In addition, the No FEAR Act requires Federal agencies to post the total number of final actions involving a finding of discrimination, along with the issues in and bases for such complaints. In 2016, EPA had no final actions involving a finding of discrimination.

EPA is dedicated to establishing and maintaining a model civil rights program that serves as an example for all Federal agencies. EPA's commitment to this goal is reflected in the subject report which the Agency respectfully submits for review.

II. BACKGROUND

On May 15, 2002, Congress enacted the "Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002," or, as it is more commonly known, the No FEAR Act. One purpose of the Act is to "require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws." Public Law 107-174, Summary. In support of this purpose, Congress found that "agencies cannot be run effectively, if they practice or tolerate discrimination." Public Law 107-174, Title I, General Provisions, section 101(1).

Section 203 of the No FEAR Act requires that each Federal agency submit an annual report to Congress not later than 180 days after the end of each fiscal year. Agencies must report on the number of Federal court cases pending or resolved in each fiscal year arising under each of the respective areas of law specified in the Act in which discrimination or retaliation was alleged. In connection with those cases, agencies must report their status or disposition; the amount of money required to be reimbursed to the Judgment Fund; and the number of employees disciplined in any cases, Federal court or otherwise, of discrimination, retaliation, or harassment. Agencies must also report on any policies implemented related to appropriate disciplinary actions against a Federal employee who discriminated against any individual, or committed a prohibited personnel practice; any employees disciplined under such a policy for conduct inconsistent with Federal antidiscrimination laws and whistleblower protection laws; and an analysis of the data collected relative to trends, causal analysis, and other information.

¹ Cases can multiple claims.

The Act imposes additional duties upon Federal agency employers intended to reinvigorate their longstanding obligation to provide a work environment free of discrimination and retaliation. The additional obligations contained in the No FEAR Act can be broken down into four (4) categories:

- A Federal agency must reimburse the Judgment Fund for payments made to employees, former employees, or applicants for Federal employment because of actual or alleged violations of Federal employment discrimination laws, Federal whistleblower protection laws, and retaliation claims arising from the assertion of rights under those laws.
- An agency must provide annual notice to its employees, former employees, and applicants for Federal employment concerning the rights and remedies applicable to them under the employment discrimination and whistleblower protection laws.
- At least every two (2) years, an agency must provide training to its employees, including managers, regarding the rights and remedies available under the employment discrimination and whistleblower protection laws.
- Quarterly, an agency must post on its public website summary statistical data pertaining to Equal Employment Opportunity (EEO) complaints filed with the agency.

The President delegated responsibility to the Office of Personnel Management (OPM) for issuance of regulations governing implementation of Title II of the No FEAR Act. OPM published final regulations on the reimbursement provisions of the Act on May 10, 2006. Final regulations to carry out the notification and training requirements of the Act were published on July 20, 2006, and OPM published the final regulations to implement the reporting and best practices provisions of the No FEAR Act on December 28, 2006. The EEOC published its final regulations to implement the posting requirements of Title III of the No FEAR Act on August 2, 2006. The EPA has prepared the subject report based on the provisions of the No FEAR Act in accordance with OPM and EEOC's final regulations.

III. DATA

a. Civil Cases

Section 203(a)(1) of the No FEAR Act requires that agencies include in their Annual Report “the number of cases arising under each of the respective provisions of law covered by paragraphs (1) and (2) of section 201(a) in which discrimination on the part of such agency was alleged.” Section 724.302 of OPM's final regulations on reporting and best practices clarifies section 203 (1) of the No FEAR Act, stating that agencies report on the “number of cases in Federal Court [district and appellate] pending or resolved...arising under each of the respective provisions of the Federal Antidiscrimination Laws and Whistleblower Protection Laws applicable to them...in which an employee, former Federal employee, or applicant alleged a violation(s) of these laws, separating data by the provision(s) of law involved.”

During FY 2016, there were a total of 11 of such cases pending before Federal courts. Among these cases, there were eight (8) claims of violation of Title VII of the Civil Rights Act of 1964, three (3) claims of violation of the Rehabilitation Act of 1973, and three (3) claims of violation of the Age Discrimination in Employment Act.

Of the 11 cases noted above, two (2) were settled during the reporting period. One (1) settlement involved a lump-sum payment of \$25,000. The other settlement involved a total payment of \$525,000, of which \$250,000 was designated for the payment of attorneys' fees. Both settlement payments will be reimbursed to the Judgment Fund.²

Of the remaining nine (9) cases, the agency prevailed in five (5) after filing dispositive motions with the court. The agency is awaiting decisions on three (3) other cases in which it filed dispositive motions. One other case is currently in pre-trial proceedings.

b. Reimbursement to the Judgment Fund

During FY 2016, the agency was required to reimburse the Judgment Fund \$550,000 as a result of settlements reached in two (2) civil cases.

c. Disciplinary Actions (5 Code of Federal Regulations (C.F.R.) § 724.302 (a)(3) & (5))

There were no employees disciplined in FY 2016, in connection with any cases described in paragraph (a) above, or for any other conduct that is inconsistent with Federal antidiscrimination laws and whistleblower protection laws or for conduct that constitutes prohibited personnel practices. Discipline as defined in § 724.102 means any one or a combination of the following actions: reprimand, suspension without pay, reduction in grade or pay, or removal.

d. Final Year-End Data Posted Under Section 301(c)(1)(B)

The final year-end data posted pursuant to section 301(c)(1)(B) of the No FEAR Act are included in Appendix 1. The final year-end data indicates that during FY 2016, there was a forty-eight percent (48%) increase in the number of formal complaints filed compared to FY 2015. In FY 2015, fifty-eight (58) formal complaints of discrimination were filed with the agency. During FY 2016, there were eighty-six (86) new formal complaints of discrimination filed by eighty-three (83) employees or applicants for employment. FY 2016 saw the second highest number of formal complaints filed since the Agency began tracking the data in accordance with the No FEAR Act.

During FY 2016, EPA's Office of Civil Rights (OCR) saw a significant decrease in the average number of days of an investigation, by twenty-one percent (21%), and five (5) year low (257.40 days in FY 2015 to 213.51 days in FY 2016).

² Cases can multiple claims.

FY 2016 complaint totals can be found in their entirety at Appendix 1 of this report.

e. Policy Description on Disciplinary Actions (5 C.F.R. § 724.302(a)(6))

The FY 2016 policy, addresses a variety of topics, including prohibition of discrimination in the workplace, and it includes a reminder to all employees that the agency will review any finding of discrimination and take disciplinary or corrective action, when appropriate. The EEO Policy, as well as information on addressing harassment and reasonable accommodation, was discussed in EPA's mandatory Successful Leaders Program for all new Agency supervisors. The 2016 EEO Policy can be found in its entirety at Appendix 4 of this report.

Additionally, EPA Order 3110.6B, *Adverse Actions*, EPA Order 3120.1B, *Conduct and Discipline*, EPA Order 3120.2, *Conduct and Discipline, Senior Executive Service*, and applicable collective bargaining agreements, provide guidance to managers about the type of disciplinary actions that may be taken, when appropriate, in response to a finding of discriminatory behavior or conduct. These actions may range from informal corrective actions, including oral admonishments and written warning, to more formal disciplinary actions such as a suspension without pay or removal.

EPA has an ongoing commitment to continue to include clear expectations about EEO in performance standards for managers. EPA has maintained revised Senior Executive Service standards that not only focus on preventing discrimination in hiring activities and promoting merit systems principles, but also require senior leaders to be personally involved in leading and implementing EEO and civil rights initiatives consistent with applicable laws. In addition, at the end of every performance cycle, the Director of OCR, Performance Review Board members, and Executive Review Board members evaluate management self-assessments to ensure that the respective rating is an appropriate reflection of the accomplishments listed.

f. No FEAR Act Training Plans (5 C.F.R. § 724.302 (a)(9))

No FEAR Act training was required for current agency employees in FY 2016. The Agency saw a 99% completion rate for No FEAR Act training during the reporting period. Additionally, new employees were required to take the training within their first 90 days of onboarding. The agency is committed to achieving a 100% completion rate for current employees for FY 2018.

IV. ANALYSIS OF TRENDS, CAUSAL ANALYSIS AND PRACTICAL KNOWLEDGE GAINED THROUGH EXPERIENCE (5 C.F.R. § 724.302 (a)(7))

At the conclusion of FY 2016, the bases of alleged discrimination most often raised were: (1) retaliation; (2) age; and (3) sex, which is consistent with FY 2015. The eighty-six (86) EEO complaints filed in EPA in FY 2016 contained sixty (60) allegations of retaliation, forty-one (41) allegations of age discrimination, and thirty-six (36) allegations of sex discrimination. While retaliation remains the top basis alleged in complaints filed, it should be noted that retaliation,

age and sex are the top three (3) bases most frequently alleged in discrimination complaints throughout the entire Federal workforce.³

The data shows that of the Agency total workforce of 15,754, only 0.52% of the agency employees have filed complaints. This percentage aligns with the last reported government-wide average of 0.5% of the workforce that filed formal complaints.⁴ EPA continues to stress training as a method for ultimately reducing the number of Federal court judgments, awards, and formal complaints, by having managers and staff continuously expand their knowledge of their responsibilities to promote equal employment opportunity. Additionally, EPA promotes training to help employees understand they also have a role in creating a workplace that promotes EEO.

EPA completed investigations for complaints pending during FY 2016 with an average processing time of 213 days, a five (5) year low. As discussed in the FY 2012 No Fear Report, and implemented effectively during FY 2014 and 2015, the agency's revamped, streamlined investigative process has significantly improved the proportion of cases adjudicated within the applicable timeframes.

During FY 2016, EPA's OCR issued final agency actions in complaints pending in an average of 300.90 days, which is a 7% decrease in processing time from FY 2015 (321.88 days in FY 2015). This is also a thirty-four percent (34%) decrease in processing time from FY 2011 (which was 449.95 days). EPA has consistently improved its processing time for investigations and final agency actions.

V. ADJUSTMENTS TO BUDGET (5 C.F.R. § 724.302(a)(2)(ii))

As reported, during FY 2016, the agency was required to reimburse the Judgment Fund in connection with two (2) settled cases. One settlement involved a payment of \$25,000, while the other settlement involved a total payment of \$525,000, \$250,000 of which was designated for the payment of attorneys' fees.

VI. ACTIONS PLANNED OR TAKEN TO IMPROVE COMPLAINT OR CIVIL RIGHTS PROGRAMS (5 C.F.R. § 724.302 (a)(7)(iv))

EPA's Civil Rights program has taken several steps to strengthen EPA's commitment to civil rights and equal employment opportunity in the workplace:

- During FY 2016, the Agency issued its Anti-Harassment Procedures to prevent and address incidents of harassment in the workplace and to provide a consistent and effective procedure for responding to allegations of harassment. The procedures supplement the Agency's 2014 Anti-Harassment Policy and provide for prompt reporting of allegations of harassment; prompt inquiry into allegations of harassment, and prompt

³ As reported in FY 2014 Report of the Federal Workforce. <http://www.eeoc.gov/federal/reports/fsp2014/index.cfm>.

⁴ As reported in FY 2014 Report of the Federal Workforce. <http://www.eeoc.gov/federal/reports/fsp2014/index.cfm>.

and appropriate corrective action as necessary. The procedures in their entirety can be found at Appendix 3.

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- OCR is focused on improving processing time in accepting/dismissing complaints. In addition to imposing time elements in its EEO professionals' performance plans, the agency has two full-time attorneys among its staff in the civil rights office to review all formal complaints for acceptance/dismissal, write all dismissal decisions, and provide EEOC case law in its analyses to support its dismissal decisions.
- In FY 2016, OCR hired a second staff attorney to assist with drafting final actions. Within thirty days of assignment to an attorney, draft final actions are forwarded to the Civil Rights and Finance Law Office (CRLFO) for review.
- In FY 2016, the EEO Counselor Training Committee, responsible for identifying and delivering EEO counselor training to maintain Counselor certification, identified and/or delivered fourteen (14) 1.0 to 1.5-hour training sessions. Also, 254.0 credit hours were earned by 26 collateral-duty EEO Counselors, and 212.5 credit hours were credited to 25 full-time EEO employees who also participated in the training sessions.

Topics of training included: Cultural Awareness Series: LGBT; Internal Mediation Pilot Briefing Update; Face-to-Face Interviews in a Virtual World/ Skype for Business for EEO Counselors; Dealing with Bullying in the Workplace; Unconscious Bias: Hidden Barriers; Working with Difficult People: How to Work with Aggressive People; No FEAR Act; Microbehaviors: Understanding, Harnessing and Leveraging the Power of the Unconscious Mind; CR and EPA LGBT on-line discussion; What Does the Macy Decision mean for T7?

- In FY 2016, there were noteworthy improvements in EEO informal complaint processing, despite the loss of integral alternative dispute resolution (ADR) staff. Specific areas include timely fact-finding for informal complaints of discrimination, making an offer to participate in ADR, and the number of ADR acceptances. Timeliness rates for conducting ADR increased from ninety-two percent (92%) in FY 2015 to ninety-six percent (96%) in FY 2016, ADR participation rates increased from forty-one percent (41%) in FY 2015 to forty-seven percent (47%) in FY 2016. In FY 2016, thirty-three percent (33%) of ADR cases were resolved.

During FY 2016, OCR rolled out a pilot ADR program that shows great promise. The pilot was initiated as a means of providing additional mediators to the Agency – individuals who could mediate cases either in person or via video teleconference (VTC). Several of the Agency's Regions and Laboratories did not have access to low- or no-cost mediation services such as Shared Neutrals Programs of the local Federal Executive Boards.

In addition to providing mediators at no-cost to the Agency (vs. an average cost of \$600/case when using private mediators), the use of EPA internal mediators was beneficial in these ways:

- Mediators knowledgeable of the Agency, its organizations and people;
- Decreased time for scheduling ADR sessions;
- Increased number of ADR sessions completed prior to complaints going to the formal stage;
- More time for discussion of issues, proposed settlements, etc., resulting in more cases reaching settlement and/or other resolution in the informal complaint phase.
- Uniform ADR services – scheduling, communication to participants, follow-up, etc., by utilizing an ADR Coordinator for all OCR-related mediations.

EPA will increase its efforts to market the ADR program during the informal phase of EEO counseling, via centralized EEO intake. OCR anticipates that using ADR in this way will help reduce costs associated with adjudicating formal complaints. OCR will continue using the shared neutrals programs in regions at no cost to EPA. OCR will market and promote ADR as part of overall agency policy.

- OCR will continue to monitor and evaluate its current Standard Operation Procedures for investigations and its Statement of Work with the United States Postal Service, its investigative contractor. OCR will make adjustments to promote the efficiency of the investigative process with the goal of completing investigations within the 180-day requirement.
- To meet delineated goals, OCR will reevaluate its review and routing processes to determine the most efficient methods for obtaining legal sufficiency reviews while aggressively seeking to meet the regulatory requirement for timely issuing of ROI's and Final Agency Decisions.
- Within the EPA, every member of the Senior Executive Service has had a performance standard related to equal employment opportunity and diversity in the workplace for several years. Senior managers must outline the specific related initiatives and actions they have personally undertaken and the results or effectiveness of those actions. At the end of every performance cycle, the Director of the Office of Civil Rights, Performance Review Board members, and Executive Review Board members review these managers' self-assessments to verify that the respective rating for the EEO performance standard is a reflection of the accomplishments listed.
- All EPA EEO investigators and counselors received the required annual training and/or refresher training in accordance with Management Directive 110.
- EPA works to comply with orders from Administrative Judges in a timely manner. In addition, timely compliance with court orders is a factor that is included in the

performance standard of the Assistant Director, Office of Civil Rights, Employment Complaints Resolution Staff (ECRS). In addition, EPA has established systems to ensure that the agency initiates any monetary or other relief in a timely manner.

- OCR posts all No FEAR statistics on the OCR website on a quarterly basis.
- OCR management makes presentations during the monthly new employee orientations to ensure that all new employees are notified of the rights and remedies applicable to them under the employment discrimination and whistleblower protection laws. New employees are also reminded of their obligation to complete No Fear Training within ninety (90) days of onboarding.
- The Civil Rights Director and EEO Officials across the agency participate in briefings, listening sessions, and brainstorming sessions to discuss EEO with managers, senior leaders and employees in order to identify and address any potential barriers and specific action items that can continue to improve the agency's EEO and Civil Rights program.

APPENDIX 1

Equal Employment Opportunity Data Posted Pursuant to the No Fear Act:

EPA (and below)

For 4th Quarter 2016 for period ending September 30, 2016

Complaint Activity	Comparative Data					
	Previous Fiscal Year Data					2016 Thru 09-30
	2011	2012	2013	2014	2015	
Number of Complaints Filed	64	79	62	48	58	<u>86</u>
Number of Complainants	61	77	59	45	57	83
Repeat Filers	3	2	3	3	1	3

Complaints by Basis	Comparative Data					
	Previous Fiscal Year Data					2016 Thru 09-30
<u>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</u>	2011	2012	2013	2014	2015	
Race	25	40	22	23	25	<u>32</u>
Color	10	13	7	10	11	<u>17</u>
Religion	2	9	4	3	5	<u>9</u>
Reprisal	39	44	31	28	30	<u>60</u>
Sex	29	42	27	14	27	<u>36</u>
PDA	0	0	0	0	0	<u>0</u>
National Origin	10	13	12	10	11	<u>15</u>
Equal Pay Act	2	1	1	1	2	<u>3</u>
Age	21	37	22	22	28	<u>41</u>
Disability	24	25	19	18	18	<u>34</u>
Genetics	0	0	0	0	1	<u>0</u>
Non-EEO	1	8	7	6	6	<u>7</u>

Complaints by Issue	Comparative Data					
	Previous Fiscal Year Data					2016 Thru 09-30
	2011	2012	2013	2014	2015	
<u>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</u>						
Appointment/Hire	1	5	5	7	5	<u>6</u>
Assignment of Duties	12	12	5	5	16	<u>13</u>
Awards	2	5	0	3	4	<u>2</u>
Conversion to Full Time/Perm Status	0	2	0	0	0	<u>0</u>
Disciplinary Action						
Demotion	0	0	0	0	0	<u>0</u>
Reprimand	3	2	3	6	2	<u>9</u>
Suspension	3	2	6	4	0	<u>8</u>
Removal	1	2	0	3	2	<u>5</u>
Letter of Warning	0	0	0	0	0	<u>3</u>
Duty Hours	3	3	2	0	0	<u>1</u>
Perf. Eval./ Appraisal	11	21	9	5	5	<u>21</u>
Examination/Test	1	0	0	0	0	<u>0</u>
Harassment						
Non-Sexual	30	32	22	19	28	<u>48</u>
Sexual	1	1	2	1	3	<u>3</u>
Medical Examination	0	0	0	0	0	<u>0</u>
Pay including overtime	4	4	1	0	1	<u>3</u>
Promotion/Non-Selection	18	26	10	8	5	<u>9</u>
Reassignment						
Denied	3	3	0	2	3	<u>1</u>
Directed	1	5	2	2	1	<u>6</u>
Reasonable Accommodation Disability	8	7	9	3	4	<u>13</u>
Reinstatement	0	0	0	0	0	<u>1</u>
Religious Accommodation	0	0	0	0	0	<u>0</u>
Retirement	0	2	1	2	1	<u>1</u>
Sex-Stereotyping	0	0	0	0	0	<u>0</u>
Telework	0	0	0	0	0	<u>7</u>

Complaints by Issue	2011	2012	2013	2014	2015	2016 Thru 09-30
Termination	9	5	4	1	1	<u>3</u>
Terms/Conditions of Employment	10	19	12	11	10	<u>20</u>
Time and Attendance	6	18	7	2	8	<u>10</u>
Training	4	11	2	6	6	<u>2</u>
Other						
User Defined - Other 1	0	0	0	0	0	<u>0</u>
Other	0	0	0	0	0	<u>0</u>
User Defined - Other 3	0	0	0	0	0	<u>0</u>
User Defined - Other 4	0	0	0	0	0	<u>0</u>

Comparative Data						
Processing Time	Previous Fiscal Year Data					2016 Thru 09-30
	2011	2012	2013	2014	2015	
Complaints pending during fiscal year						
Average number of days in investigation	274.33	326.57	311.07	245.08	257.40	213.51
Average number of days in final action	449.95	409.47	198.44	289.65	321.81	300.90
Complaint pending during fiscal year where hearing was requested						
Average number of days in investigation	263.57	324.42	314.44	249.50	259.25	224.92
Average number of days in final action	0	326.57	35.00	12.00	36.00	26.27
Complaint pending during fiscal year where hearing was not requested						
Average number of days in investigation	312.00	328.83	306.58	233.87	253.36	198.75
Average number of days in final action	449.95	467.50	218.88	375.08	607.62	840.83

Comparative Data						
Complaints Dismissed by Agency	Previous Fiscal Year Data					2016 Thru 09-30
	2011	2012	2013	2014	2015	
Total Complaints Dismissed by Agency	6	10	6	9	6	<u>11</u>
Average days pending prior to dismissal	441	212	123	258	99	130

Complaints Withdrawn by Complainants

Total Complaints Withdrawn by Complainants	3	12	19	3	8	10
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Comparative Data

Total Final Agency Actions Finding Discrimination	Previous Fiscal Year Data										2016 Thru 09-30	
	2011		2012		2013		2014		2015			
	#	%	#	%	#	%	#	%	#	%	#	%
Total Number Findings	0		0		0		1		1		0	
Without Hearing	0	0	1	100	0	0	0	0	0	0	0	0
With Hearing	0	0	0	0	0	0	1	100	1	100	0	0

Comparative Data

Findings of Discrimination Rendered by Basis

Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints and findings.	Previous Fiscal Year Data										2016 Thru 09-30	
	2011		2012		2013		2014		2015			
	#	%	#	%	#	%	#	%	#	%	#	%
Total Number Findings	0		1		0		1		1		0	
Race	0	0	0	0	0	0	1	100	0	0	0	0
Color	0	0	0	0	0	0	0	0	0	0	0	0
Religion	0	0	0	0	0	0	0	0	0	0	0	0
Reprisal	0	0	1	100	0	0	0	0	0	0	0	0
Sex	0	0	0	0	0	0	1	100	0	0	0	0
PDA	0	0	0	0	0	0	0	0	0	0	0	0
National Origin	0	0	0	0	0	0	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0	0	0	0	0	0	0
Age	0	0	0	0	0	0	1	100	0	0	0	0
Disability	0	0	0	0	0	0	0	0	1	100	0	0
Genetics	0	0	0	0	0	0	0	0	0	0	0	0
Non-EEO	0	0	0	0	0	0	0	0	0	0	0	0

Findings After Hearing	0	0	0	1	1	0						
Race	0	0	0	0	0	0	1	100	0	0	0	0
Color	0	0	0	0	0	0	0	0	0	0	0	0
Religion	0	0	0	0	0	0	0	0	0	0	0	0
Reprisal	0	0	0	0	0	0	0	0	0	0	0	0
Sex	0	0	0	0	0	0	1	100	0	0	0	0
PDA	0	0	0	0	0	0	0	0	0	0	0	0
National Origin	0	0	0	0	0	0	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0	0	0	0	0	0	0
Age	0	0	0	0	0	0	1	100	0	0	0	0
Disability	0	0	0	0	0	0	0	0	1	100	0	0
Genetics	0	0	0	0	0	0	0	0	0	0	0	0
Non-EEO	0	0	0	0	0	0	0	0	0	0	0	0
Findings Without Hearing	0	1	0	0	0	0						
Race	0	0	0	0	0	0	0	0	0	0	0	0
Color	0	0	0	0	0	0	0	0	0	0	0	0
Religion	0	0	0	0	0	0	0	0	0	0	0	0
Reprisal	0	0	1	100	0	0	0	0	0	0	0	0
Sex	0	0	0	0	0	0	0	0	0	0	0	0
PDA	0	0	0	0	0	0	0	0	0	0	0	0
National Origin	0	0	0	0	0	0	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0	0	0	0	0	0	0
Age	0	0	0	0	0	0	0	0	0	0	0	0
Disability	0	0	0	0	0	0	0	0	0	0	0	0
Genetics	0	0	0	0	0	0	0	0	0	0	0	0
Non-EEO	0	0	0	0	0	0	0	0	0	0	0	0

Findings of Discrimination Rendered by Issue	Comparative Data											
	Previous Fiscal Year Data										2016 Thru 09-30	
	2011		2012		2013		2014		2015			
	#	%	#	%	#	%	#	%	#	%	#	%
Total Number Findings	0		1		0		1		1		0	
Appointment/Hire	0	0	0	0	0	0	1	100	0	0	0	0
Assignment of Duties	0	0	0	0	0	0	0	0	0	0	0	0
Awards	0	0	0	0	0	0	0	0	0	0	0	0
Conversion to Full Time/Perm Status	0	0	0	0	0	0	0	0	0	0	0	0
Disciplinary Action												
Demotion	0	0	0	0	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0	0	0	0	0	0	0
Suspension	0	0	0	0	0	0	0	0	0	0	0	0
Removal	0	0	0	0	0	0	0	0	0	0	0	0
Letter of Warning	0	0	0	0	0	0	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0	0	0	1	100	0	0
Perf. Eval./ Appraisal	0	0	0	0	0	0	0	0	0	0	0	0
Examination/Test	0	0	0	0	0	0	0	0	0	0	0	0
Harassment												
Non-Sexual	0	0	1	100	0	0	0	0	0	0	0	0
Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0	0	0	0	0	0	0
Pay including overtime	0	0	0	0	0	0	0	0	0	0	0	0
Promotion/Non-Selection	0	0	0	0	0	0	0	0	0	0	0	0
Reassignment												
Denied	0	0	0	0	0	0	0	0	0	0	0	0
Directed	0	0	0	0	0	0	0	0	0	0	0	0
Reasonable Accommodation Disability	0	0	0	0	0	0	0	0	1	100	0	0
Reinstatement	0	0	0	0	0	0	0	0	0	0	0	0
Religious Accommodation	0	0	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	0	0	0	0	0	0

Findings of Discrimination Rendered by Issue	Comparative Data										2016 Thru 09-30	
	2011		2012		2013		2014		2015			
	#	%	#	%	#	%	#	%	#	%	#	%
Sex-Stereotyping	0	0	0	0	0	0	0	0	0	0	0	0
Telework	0	0	0	0	0	0	0	0	0	0	0	0
Termination	0	0	0	0	0	0	0	0	0	0	0	0
Terms/Conditions of Employment	0	0	0	0	0	0	0	0	0	0	0	0
Time and Attendance	0	0	0	0	0	0	0	0	0	0	0	0
Training	0	0	0	0	0	0	0	0	0	0	0	0
Other - User Define												
User Defined - Other 1	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0
User Defined - Other 3	0	0	0	0	0	0	0	0	0	0	0	0
User Defined - Other 4	0	0	0	0	0	0	0	0	0	0	0	0
Findings After Hearing	0		0		0		1		1		0	
Appointment/Hire	0	0	0	0	0	0	1	100	0	0	0	0
Assignment of Duties	0	0	0	0	0	0	0	0	0	0	0	0
Awards	0	0	0	0	0	0	0	0	0	0	0	0
Conversion to Full Time/Perm Status	0	0	0	0	0	0	0	0	0	0	0	0
Disciplinary Action												
Demotion	0	0	0	0	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0	0	0	0	0	0	0
Suspension	0	0	0	0	0	0	0	0	0	0	0	0
Removal	0	0	0	0	0	0	0	0	0	0	0	0
Letter of Warning	0	0	0	0	0	0	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0	0	0	1	100	0	0
Perf. Eval./ Appraisal	0	0	0	0	0	0	0	0	0	0	0	0
Examination/Test	0	0	0	0	0	0	0	0	0	0	0	0
Harassment												
Non-Sexual	0	0	0	0	0	0	0	0	0	0	0	0

Findings of Discrimination Rendered by Issue	Comparative Data										2016 Thru 09-30	
	2011		2012		2013		2014		2015			
	#	%	#	%	#	%	#	%	#	%	#	%
Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0	0	0	0	0	0	0
Pay including overtime	0	0	0	0	0	0	0	0	0	0	0	0
Promotion/Non-Selection	0	0	0	0	0	0	0	0	0	0	0	0
Reassignment												
Denied	0	0	0	0	0	0	0	0	0	0	0	0
Directed	0	0	0	0	0	0	0	0	0	0	0	0
Reasonable Accommodation Disability	0	0	0	0	0	0	0	0	1	100	0	0
Reinstatement	0	0	0	0	0	0	0	0	0	0	0	0
Religious Accommodation	0	0	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	0	0	0	0	0	0
Sex-Stereotyping	0	0	0	0	0	0	0	0	0	0	0	0
Telework	0	0	0	0	0	0	0	0	0	0	0	0
Termination	0	0	0	0	0	0	0	0	0	0	0	0
Terms/Conditions of Employment	0	0	0	0	0	0	0	0	0	0	0	0
Time and Attendance	0	0	0	0	0	0	0	0	0	0	0	0
Training	0	0	0	0	0	0	0	0	0	0	0	0
Other - User Define												
User Defined - Other 1	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0
User Defined - Other 3	0	0	0	0	0	0	0	0	0	0	0	0
User Defined - Other 4	0	0	0	0	0	0	0	0	0	0	0	0
Findings Without Hearing	0		1		0		0		0		0	
Appointment/Hire	0	0	0	0	0	0	0	0	0	0	0	0
Assignment of Duties	0	0	0	0	0	0	0	0	0	0	0	0
Awards	0	0	0	0	0	0	0	0	0	0	0	0
Conversion to Full Time/Perm Status	0	0	0	0	0	0	0	0	0	0	0	0

Findings Without Hearing	Comparative Data										2016 Thru 09-30	
	2011		2012		2013		2014		2015			
	#	%	#	%	#	%	#	%	#	%	#	%
Disciplinary Action												
Demotion	0	0	0	0	0	0	0	0	0	0	<u>0</u>	0
Reprimand	0	0	0	0	0	0	0	0	0	0	<u>0</u>	0
Suspension	0	0	0	0	0	0	0	0	0	0	<u>0</u>	0
Removal	0	0	0	0	0	0	0	0	0	0	<u>0</u>	0
Letter of Warning	0	0	0	0	0	0	0	0	0	0	<u>0</u>	0
Duty Hours	0	0	0	0	0	0	0	0	0	0	<u>0</u>	0
Perf. Eval./ Appraisal	0	0	0	0	0	0	0	0	0	0	<u>0</u>	0
Examination/Test	0	0	0	0	0	0	0	0	0	0	<u>0</u>	0
Harassment												
Non-Sexual	0	0	1	100	0	0	0	0	0	0	<u>0</u>	0
Sexual	0	0	0	0	0	0	0	0	0	0	<u>0</u>	0
Medical Examination	0	0	0	0	0	0	0	0	0	0	<u>0</u>	0
Pay including overtime	0	0	0	0	0	0	0	0	0	0	<u>0</u>	0
Promotion/Non-Selection	0	0	0	0	0	0	0	0	0	0	<u>0</u>	0
Reassignment												
Denied	0	0	0	0	0	0	0	0	0	0	<u>0</u>	0
Directed	0	0	0	0	0	0	0	0	0	0	<u>0</u>	0
Reasonable Accommodation Disability	0	0	0	0	0	0	0	0	0	0	<u>0</u>	0
Reinstatement	0	0	0	0	0	0	0	0	0	0	<u>0</u>	0
Religious Accommodation	0	0	0	0	0	0	0	0	0	0	<u>0</u>	0
Retirement	0	0	0	0	0	0	0	0	0	0	<u>0</u>	0
Sex-Stereotyping	0	0	0	0	0	0	0	0	0	0	<u>0</u>	0
Telework	0	0	0	0	0	0	0	0	0	0	<u>0</u>	0
Termination	0	0	0	0	0	0	0	0	0	0	<u>0</u>	0
Terms/Conditions of Employment	0	0	0	0	0	0	0	0	0	0	<u>0</u>	0
Time and Attendance	0	0	0	0	0	0	0	0	0	0	<u>0</u>	0
Training	0	0	0	0	0	0	0	0	0	0	<u>0</u>	0

Other - User Define

User Defined - Other 1	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0
User Defined - Other 3	0	0	0	0	0	0	0	0	0	0	0	0
User Defined - Other 4	0	0	0	0	0	0	0	0	0	0	0	0

Comparative Data

Pending Complaints Filed in Previous Fiscal Years by Status⁵

	Previous Fiscal Year Data					2016 Thru 09-30
	2011	2012	2013	2014	2015	
Total complaints from previous Fiscal Years	61	59	87	87	87	<u>85</u>
Total Complainants	48	52	79	82	78	77
Number complaints pending						
Investigation	51	20	11	3	1	<u>5</u>
ROI issued, pending Complainant's action	0	3	3	0	0	<u>0</u>
Hearing	36	38	59	65	68	<u>48</u>
Final Agency Action	19	12	22	20	20	<u>39</u>
Appeal with EEOC Office of Federal Operations	4	8	15	13	14	<u>41</u>

Comparative Data

Complaint Investigations

	Previous Fiscal Year Data					2016 Thru 09-30
	2011	2012	2013	2014	2015	
Pending Complaints Where Investigations Exceed Required Time Frames	70	31	22	3	2	<u>7</u>

⁵ This section covers active complaints that were filed in prior years that remained open during FY 2016. It does not include complaints filed in 2016.

APPENDIX 2



THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

DEC 15 2014

MEMORANDUM

SUBJECT: Anti-Harassment Policy Statement

FROM: Gina McCarthy

A handwritten signature in blue ink, appearing to read "Gina McCarthy", is written over the printed name.

TO: All Employees

I want to reaffirm the U.S. Environmental Protection Agency's commitment to prohibit harassment of any kind, as clearly stated in our agency's anti-harassment policy. Harassment is unlawful when it is directed at an individual because of a lawfully protected basis and is sufficiently severe or pervasive that it creates a hostile work environment or takes the form of a tangible employment action. It is EPA policy to ensure that appropriate measures are implemented to prevent harassment, either sexual or nonsexual, in the workplace and to correct harassing conduct before it becomes severe or pervasive. EPA policy also strictly prohibits any retaliation against an employee who reports a concern about workplace harassment or assists in any inquiry about such a report.

For the purposes of this policy, unlawful harassment is defined as any unwelcome verbal or physical conduct based on race; color; sex, including pregnancy and gender identity/expression; national origin; religion; age; prior protected Equal Employment Opportunity activity; protected genetic information; sexual orientation or status as a parent when:

- the behavior can reasonably be considered to adversely affect the work environment; or
- an employment decision affecting the employee is based upon the employee's acceptance or rejection of such conduct.

Sexual harassment can be either a form of harassment based on a person's sex that need not involve conduct of a sexual nature or harassment involving any unwelcome sexual advance, request for sexual favors or other verbal or physical conduct of a sexual nature when:

- submission to such conduct is made explicitly or implicitly a term or condition of an employee's job, pay or career;
- submission to or rejection of such conduct by an employee is used as a basis for career or employment decisions affecting that employee; or
- such conduct has the purpose or effect of unreasonably interfering with an employee's performance or creates an intimidating, hostile or offensive environment.

Sexual harassment need not involve members of the opposite sex and can be perpetrated by and against members of either sex.

Examples of workplace harassment include:

- Oral or written communications that contain offensive name calling, jokes, slurs, negative stereotyping, hostility or threats. This includes comments or jokes that are distasteful or targeted at individuals or members of the lawfully protected bases set forth above.
- Nonverbal conduct, such as staring, leering and giving inappropriate gifts.
- Physical conduct, such as assault or unwanted touching.
- Visual images, such as derogatory or offensive pictures, cartoons or drawings. Such prohibited images include those in hard copy or electronic form.

The EPA does not permit harassment by or against anyone in the workplace. This includes any employee, applicant for EPA employment, grantee, contractor, Senior Environmental Employment enrollee or Federal Advisory Committee Act member. Workplace harassment should be reported immediately by the affected person to a first-line supervisor, a higher-level supervisor or manager in her or his chain of command, the Office of Inspector General or Labor and Employee Relations staff, as appropriate. Supervisors, in consultation with their human resources or legal offices, must conduct prompt, thorough and impartial inquiries.

If necessary and to the extent possible, measures must be taken to safeguard the anonymity of employees who file complaints. If management, in consultation with legal counsel, determines that harassment has occurred, it must be corrected as soon as possible. Harassing conduct by EPA employees need not rise to the level of unlawful harassment for it to constitute misconduct subject to corrective or disciplinary action.

In addition, EPA employees or applicants for employment may also use the complaint process established by the U.S. Equal Employment Opportunity Commission to file a complaint of harassment based on race, color, sex, religion, national origin, age, disability, prior protected EEO activity and protected genetic information for individual redress. To invoke that process, EPA employees and applicants must contact an EEO counselor within 45 days of an alleged incident of harassment. Reporting harassment to a supervisor in accordance with the previous paragraph does not satisfy this requirement and does not invoke the EEOC's process. EPA employees or applicants for employment may also report harassment based on sexual orientation and status as a parent to the EPA Office of Civil Rights.

Should you have any questions or need additional information about this policy, please contact the EPA Office of Human Resources at (202) 564-4646 or the EPA Office of Civil Rights at (202) 564-7272. Additional resources are available by visiting intranet.epa.gov/civilrights/lawsandstatus.htm.

APPENDIX 3

ORDER

Classification No.: 4711

Approval Date: 11/20/2015

Review Date: 11/20/2018

PROCEDURE FOR ADDRESSING ALLEGATIONS OF WORKPLACE HARASSMENT

I. PURPOSE.

All employees shall be treated fairly and equitably and without discrimination. The purpose of this order is to prevent and address incidents of harassment (as defined herein) in the U.S. Environmental Protection Agency's (EPA or agency) workplace and to provide a consistent and effective procedure for responding to allegations of harassment. This Order supplements EPA's Anti-Harassment Policy and established a procedure for:

- x Prompt reporting of allegations of harassment;
- x Prompt inquiry into allegations of harassment, and
- x Prompt and appropriate corrective action as necessary.

II. BACKGROUND.

This order is not intended to replace or impede the Equal Employment Opportunity Commission discrimination complaint process found at Title 29 C.F.R. Part 1614, the discrimination complaint process in EPA Order 1000.31A4, *Discrimination on the Basis of Sexual Orientation, Status as a Parent, Marital Status or Political Affiliation*; the Agency's administrative grievance process set forth in EPA Order 3110.8 A2, *EPA Administrative Grievance System*; or negotiated grievance processes for employees in collective bargaining units, and it does not alter the filing deadlines for invoking those processes. This order sets forth a procedure separate from those processes. Complaints of harassment may be made under this order irrespective of whether any other applicable process is invoked, and may be made in addition to other applicable processes.

III. APPLICABILITY.

This order applies to allegations of harassment based on race, color, sex (including pregnancy, sex stereotyping, gender identity or expression), national origin, religion, age, disability, prior protected Equal Employment Opportunity activity, sexual orientation, status as a parent, marital status, political affiliation, and protected genetic information.

This order, and the procedures contained herein, also apply to other types of harassment (e.g. actions that are threatening, intimidating, bullying and/or disturbing) but not alleged to be based on the protected classes listed above.⁶

This order applies to all EPA employees and applicants for employment, and to other persons included in the definition of “affected person” described in this order, and will be used by the agency to address allegations of workplace harassment regardless of who makes them or who the alleged harasser may be.

The information contained in this order does not create any independent rights and/or obligations enforceable in law or equity in any civil or criminal matter. This order and any procedures contained herein may not be construed to limit the otherwise lawful investigative, administrative, or prosecutorial prerogatives of the agency, its Office of the Inspector General, or the U.S. Department of Justice. The information contained in this order also does not supersede existing collective bargaining agreements and/or related statutory rights.

A. RELATIONSHIP OF THE PROCEDURES PROVIDED UNDER THIS ORDER TO THE EQUAL EMPLOYMENT OPPORTUNITY AND GRIEVANCE PROCESSES.

1. The procedures provided under this order do not extend, modify or otherwise alter the procedures, including the timeframes, provided in the EEO process, the grievance processes, or any other complaint process available to agency employees, former employees or applicants for employment.
2. This order creates an administrative process for reporting, inquiring into and, as needed, taking action to address complaints of harassment, as defined in Section IV, and that process is independent of the EEO process.
3. Reports of harassment related to an EEO complaint that come to the attention of a supervisor, manager, or agency Human Resource Official, require initiation of an inquiry based upon this order and will not impact the disposition of a complaint filed in another forum. Employees reporting a claim of harassment relating to the protected EEO categories described above, should be informed of the applicable EEO process.

⁶ Such as bullying of an employee based on his/her grade (GS) level or educational background, union activity, etc.

4. Affected persons may report incidents of harassment under this order even if they initiate the EEO process through the Agency's Office of Civil Rights or if they invoke any other complaint procedure.
5. For further details on how to file an EEO complaint, in addition to or independent of the procedures in this order, please consult <http://www.epa.gov/civilrights/t7filecmplt.htm>.
6. Affected persons who are included in bargaining units seeking information on deadlines and other procedures for filing a grievance, independent of the process provided in this Order, may consult applicable collective bargaining agreements, and consult with applicable union representatives. Federal employees not included in a bargaining unit, who are seeking information on deadlines and other procedures for filing an administrative grievance, may consult applicable procedures at http://intranet.epa.gov/ohr/rmpolicy/ads/orders/3110_8a2.pdf

B. OTHER TYPES OF HARASSMENT AND GENERAL MISCONDUCT

1. Affected persons may be subject to incidents of harassment that are not based on one of the protected classes identified in this order. These include actions that are threatening, intimidating, bullying⁷ and/or disturbing but are not alleged to be or determined to be based on race, color, sex (including pregnancy, sex stereotyping, gender identity or expression), national origin, religion, age, disability, prior protected EEO activity, sexual orientation, status as a parent, marital status, political affiliation, and protected genetic information. Assignment of work by a supervisor, a difference of opinion, a disagreement on a work-related matter, or any other similar communication that is expressed in a professional manner, are not considered harassment.
2. Affected persons who believe they have been subjected to these other forms of harassment or misconduct not based on protected class should still immediately report the matter to a first-line supervisor or, if the first-line supervisor is the alleged harasser, a higher-level supervisor or manager in his or her chain of command, or an agency HR official. Such reports will be handled through procedures contained in this order.

C. THREATS OF VIOLENCE⁸

⁷ Bullying may rise to the level of harassment as defined in this order.

⁸ Refer to EPA Order 1400.1 A2 EPA POLICY FOR PREVENTING VIOLENCE IN THE WORKPLACE.

1. All affected persons should report threats of violence, an actual assault, or any acts of violence immediately to agency security officials, local law enforcement, and the OIG.
2. All supervisors, managers, and agency HR officials must report threats of violence, and actual assault, or any acts of violence immediately to agency security officials, local law enforcement, and the OIG.

IV. DEFINITIONS.

For purposes of this order only, the following definitions apply:

A. Harassment. Any inappropriate, unwelcome conduct, verbal or physical, based on an individual's race, color, sex (including pregnancy, sex stereotyping, gender identity or expression), national origin, religion, age, disability, prior protected EEO activity, sexual orientation, status as a parent, marital status, political affiliation, protected genetic information, or other conduct that is threatening, intimidating, and/or bullying when the conduct can reasonably be considered to adversely affect the work environment or terms and conditions of the affected person's employment, or an employment decision impacting upon an affected person is based on the affected person's acceptance or rejection of such conduct. Examples of harassment may include, but are not limited to:

1. Oral or written communication related to membership in one of the groups set forth above that contains offensive name calling, jokes, slurs, negative stereotyping, hostility or threats. This includes comments or jokes that are distasteful or targeted at individuals or members of the groups set forth above.
2. Nonverbal conduct, such as staring or leering that can objectively be construed as harassment based on the categories listed above.
3. Physical conduct, such as assault or unwanted touching.
4. Distribution or display of visual images, such as derogatory or offensive pictures, cartoons or drawings. Such prohibited images include those in hard copy or electronic form.

B. Sexual Harassment. Sexual harassment is harassment that involves conduct of a sexual nature, harassment involving any unwelcome sexual advance, request for sexual favors or other verbal or physical conduct of a sexual nature. This occurs when:

1. Submission to such conduct is made explicitly or implicitly a term or condition of an affected person's job, pay or career (i.e. Quid Pro Quo);

2. Submission to or rejection of such conduct by an affected person is used as a basis for career or employment or other work-related decisions affecting that affected person, or
3. Such conduct has the purpose or effect of unreasonably interfering with an affected person's performance or creates an intimidating, hostile or offensive environment.

NOTE: Sexual harassment need not involve members of the opposite sex and can be perpetrated by and against members of either sex.

- C. Affected Person.** A federal employee, an applicant for employment, a grantee employee, a contractor employee, an EPA Federal Advisory Committee Act member, a Senior Environment Employee enrollee, a student volunteer or intern, or a Public Health Service Officer who believes he or she has been subjected to harassment in the course of his or her employment or performance of agency-related functions.
- D. Agency Human Resource Official.** A Human Resource Officer/Project Management Officer, a headquarters Workplace Solutions staff member, or a Labor and Employee Relations Specialist. Referred to as agency HR official.
- E. Agency Security Officials.** EPA security personnel or Federal Protective Service.
- F. Alleged Harasser.** Any person, regardless of his or her employment relationship with the Agency, who allegedly subjected an affected person to workplace harassment. An alleged harasser could be a manager or supervisor, subordinate, co-worker, or non-agency employee.
- G. Fact-finder.** A person who conducts a fact-finding inquiry under this order regarding allegations of harassment. The fact-finder must be a person who is not named in the allegation(s) of harassment and who has not witnessed the alleged incident(s) of harassment. The fact-finder must also not act as an advocate on behalf of either party. The fact-finder may be a supervisor or manager in the alleged harasser's organization, a supervisor or manager outside the alleged harasser's organization, an agency HR official, a contractor, or another uninvolved individual. The fact-finder, however, shall not be a subordinate employee to the alleged harasser.
- H. Fact-finding.** Information gathered regarding allegations of harassment in order to provide a reasonable and sufficient basis for a conclusion by a decision-maker as to whether such conduct has occurred. The nature, extent and scope of the fact-finding will vary based on the circumstances.

- I. **Fact-finding Report.** A written report that may be prepared by the fact-finder depending on the nature of the fact-finding. The information contained in the fact-finding report should include a summary of all investigative steps taken and evidence gathered. The report does not render judgment on the allegations or evidence of harassment and does not contain any recommendations to the decision-maker; it merely sets forth the relevant facts, as revealed through the inquiry.

NOTE: Even when a fact-finding report is not necessary, there must be some documentation reflecting any action taken by the decision maker.

- J. **Decision-maker.** A supervisor or manager (typically in the alleged harasser's supervisory chain) with authority to make determinations as to whether the alleged harassment actually occurred and, if so, to take and contemporaneously document appropriate corrective action. The decision maker should not act as the fact-finder. The decision maker should not have been named in the allegation(s) of harassment or witnessed the alleged incident(s) of harassment, and may not serve as an advocate on behalf of either party. In situations where the alleged harasser is not an agency employee (e.g., grantee or contractor employee), the decision-maker will take corrective action to the extent permitted by law or regulation. In such situations, the decisionmaker may have to coordinate with the alleged harasser's employer to ensure that prompt corrective action is taken regarding the allegations of harassment.
- K. **Workplace Bullying.** Workplace bullying may include the deliberate, hurtful, negative, repeated mistreatment of one or more employees. Examples of workplace bullying include constant and unfair criticism, teasing, yelling, insulting, malicious gossiping, and aggressive behavior.

V. **PROCEDURES.**

A. **Reporting Harassment**

The individuals to whom allegations may be reported, as described in IV.A.1, IV.A.2, and IV.A.3 are supervisors, managers or agency HR officials and applies to reports of harassment by both affected person(s) and witnesses.

1. An affected person who believes he or she is being harassed should immediately report the matter to a first-line supervisor, or, if the first-line supervisor is the alleged harasser, then to the next manager in his or her chain of command, a higher-level supervisor or an agency HR official. Affected persons are required to provide a written account of such alleged conduct as soon as possible after reporting the alleged harassment.

2. Witnesses to alleged incidents of harassment may also report these incidents pursuant to the procedures contained in this order. Witnesses should report and may be expected to, provide a written description of the alleged incident(s) of harassment to his or her own supervisor or manager, to the supervisor or manager in the affected person's chain of command, or to an agency HR official.
3. In instances where an affected person designates a representative in writing, the affected employee's personal representative or union representative may report these incidents on behalf of the affected person pursuant to the procedures contained in this order. Any bargaining unit employee may request union representation at any time during these procedures in accordance with existing laws and collective bargaining agreements.
4. Any supervisor or manager or agency HR official, as described in V.A.1, V.A.2, and V.A.3 above, who receives a report of alleged harassment or otherwise becomes aware of harassment⁹, or an allegation of the same, shall immediately refer the matter to the alleged harasser's first-line supervisor. If the alleged harasser's first-line supervisor is named in the allegations, the matter should be referred to a higher-level supervisor in the alleged harasser's chain of command or an agency HR official.
5. If an affected person informs a supervisor, manager or an agency HR official about alleged harassment, but asks him or her to keep the matter confidential and takes no action, the individual receiving the allegation must inform the affected person of the supervisor's, manager's or agency HR official's obligation to report the allegations to the affected person's chain of command who will take steps described in IV.B. below, consistent with this order.
6. If the allegation involves an affected person or an alleged harasser who is not an agency employee, the individual receiving the allegation shall promptly contact an agency HR official or agency legal counsel to determine the appropriate course of action, including how the appropriate employer will be notified.

B. Immediate Response

Any agency official (supervisor, manager, or agency HR official) who becomes aware of, or is notified of, an allegation(s) of harassment, must immediately take the following actions:

⁹ EPA supervisors and managers are required to address or correct harassment regardless of whether an affected person files a complaint.

1. Coordinate with the agency HR official(s), agency legal counsel, as necessary, and an appropriate supervisor or manager in the alleged harasser's chain of command. Generally, the appropriate supervisor or manager will be the alleged harasser's first-line supervisor, unless s/he is named in the allegations. If the alleged harasser's first-line supervisor is named in the allegations, the matter should be referred to a higher-level supervisor in the alleged harasser's chain of command.
2. The supervisor or manager identified above, in coordination with agency HR official(s) and legal counsel, will promptly determine the appropriate decision-maker and fact-finder (who should not be the same person), if any, regarding the allegations. Information necessary to identify a decision maker may include the identity of the alleged harasser as well as others that may have been aware of the allegations and chose not to take action. In determining the appropriate fact-finder, management will also consider concerns or preferences expressed by the affected person (e.g. gender of the fact-finder or perceived biases regarding the designated fact-finder). Additionally, management will consider a request by the affected person for designation of a fact-finder from outside his/her chain-of-command or from outside the agency. In instances when an affected person makes such a request in writing, management will provide a written response to the affected person regarding his/her request. The affected person should be informed of the availability of the Employee Assistance Program.
3. The decision-maker, in consultation with agency legal counsel and an agency HR official, shall promptly assess the situation to determine the nature of the allegation and to identify what action(s), if any, should be immediately taken. The affected person should not be involuntarily transferred to another position pending fact-finding and review of the harassment allegations, or otherwise treated adversely in response to his/her allegations of harassment. Similarly, if the initial assessment does not indicate at least some basis to support the allegations of harassment, actions such as those listed below or any other action that would adversely impact the alleged harasser, should not be taken pending completion of the fact-finding.
 - a. Immediate action will include:
 1. Inform the alleged harasser that an allegation has been made, describe the nature of the allegation, and explain that the conduct, if true, must immediately cease.
 2. Inform the alleged harasser of the prohibition against retaliation against any person for raising allegations of harassment, or participating in a fact-finding regarding such allegations.

3. Instruct the affected person and alleged harasser to refrain from initiating work-related contact with each other (in person, via email, or by telephone) pending the outcome of the fact-finding. In order to recognize that not all situations require an absolute prohibition on communications, allow managerial discretion to tailor an appropriate response to the situation at hand, and to avoid the potentially negative impact that the prior wording could possibly have. The scope and parameters of this limitation should be determined based on the severity of the allegations raised, and in consultation with agency legal counsel and the agency HR official.
4. Advise all persons involved that the confidentiality of harassment allegations and the identity of all involved, particularly the affected person(s) and alleged harasser(s), will be protected to the extent possible, and will only be revealed to persons with a need to know.
5. Inform the affected person and the alleged harasser that the agency is obligated to conduct appropriate fact-finding, including preparation of a fact-finding report (if appropriate), regardless of the manner in which the allegations came to management's attention and regardless of the affected person's desire that the allegations remain confidential or not be reported.

NOTE: All supervisors, managers, and agency HR officials must report threats of violence, actual assaults, or any acts of violence immediately to agency security officials, local law enforcement, and the OIG.

b. Immediate action also may include:

- (1) Making work scheduling changes so as to avoid contact between the affected person and alleged harasser.
- (2) Temporarily transferring the alleged harasser.
- (3) When circumstances do not permit the physical separation of the alleged harasser and the affected person, pending the outcome of the fact-finding, the alleged harasser may be placed on administrative leave. When utilizing this option, managers should ensure the amount of time an employee is placed on non-disciplinary leave with pay is minimized to the extent possible and appropriate.
- (4) Where the alleged harassment involves conduct that may be criminal in nature (e.g., assault or battery), the matter should be immediately referred to an appropriate law enforcement entity including FPS and to the OIG. In situations where a law enforcement agency or the OIG initiates an investigation, any fact-finding conducted under this order

should only be conducted when coordinated with and authorized by the law enforcement agency or the OIG. In cases involving the OIG, the decision-maker, in consultation with agency legal counsel and an agency HR official, should coordinate with the OIG on other steps that may be taken to prevent further harassment to the affected person pending an OIG review or investigation into the allegations.

C. Fact-finding

Generally, the fact-finder will complete the fact-finding and, if appropriate, deliver a fact-finding report that has been reviewed by agency legal counsel and an agency HR official to the decisionmaker, within 15 business days of his or her designation. The time period for completing the fact-finding and report may be extended by the decision-maker under certain circumstances (e.g., unavailability of witnesses).

1. Prior to conducting any fact-finding, the fact-finder should develop a basic plan in coordination with agency legal counsel and an agency HR official regarding information to be gathered in the inquiry. The fact-finder should consult with agency legal counsel and an agency HR official as necessary throughout the fact-finding. The fact-finder should refer to Appendix A, which contains sample interview questions that should be tailored to the particular allegation(s) at issue.
2. Fact-finding will usually include, at a minimum, interviews with:
 - a. The affected person(s);
 - b. The alleged harasser(s);
 - c. Any witnesses to the alleged harassment, and
 - d. Any other person who could reasonably be expected to have relevant information that could corroborate or refute allegations, (e.g., the person did not witness the harassment but spoke to the affected person immediately after the alleged event and could provide useful information).
3. The fact-finder must remind the affected person, alleged harasser, and any other persons interviewed about the agency's prohibition against retaliation. Additionally, the fact-finder must advise any interviewee, prior to the start of the interview, that he or she will be required to certify the accuracy of his/her written statement, or of the interview summary prepared by the fact-finder, in accordance with Appendix C.

4. The fact-finder must complete summaries of any interviews conducted and obtain signatures from interviewed persons attesting to their accuracy, or obtain signed statements, affidavits, declarations, or transcribed interviews, under oath, as appropriate. If an interviewed person refuses to attest to the accuracy of the information he or she provides to the fact-finder that is reflected in an interview summary or other document prepared by the fact-finder, the factfinder may still include such document in the fact-finding report for consideration by the decision-maker. In such situations, the fact-finder must ask the interviewed person to explain his/her refusal for attesting to the accuracy of the document, and include such explanation in the fact-finding report.

NOTE: Generally, an affected person or an interviewee will not be provided a copy of the fact-finding report, or other materials generated or obtained in the course of the fact-finding, with the exception of a copy of the written statement he or she provides, or the summary of his or her interview prepared by the fact-finder.

5. The fact-finding shall be confined solely to the reported allegation(s) of harassment. If additional unrelated allegations of harassment are made, or evidence of additional harassment comes to light during the fact-finding, the fact-finder shall immediately alert the decisionmaker for a determination (in consultation with agency legal counsel and an agency HR official) regarding whether the scope of the fact-finding should be expanded, or a new and separate fact-finding should occur.
6. In accordance with the applicable laws and regulations, all agency employees, including supervisors and managers, are required to cooperate in fact-findings regarding allegations of harassment. The fact-finder shall consult with agency legal counsel and an agency HR official regarding any refusal to cooperate in the fact-finding inquiry. Employees who are members of bargaining units represented by a union will be afforded any applicable rights and procedures required by law and under collective bargaining agreements during the fact-finding including the right to be represented during an interview. The fact-finder should consult with agency legal counsel and an agency HR official regarding any questions relating to an employee's right to representation.

D. Decision Making

1. The decision-maker must promptly:
 - a. Review the results of the fact-finding;
 - b. Consult with agency legal counsel and an agency HR official;

- c. Determine whether the results demonstrate that any harassment occurred, and
- d. Take any appropriate corrective action, in consultation with agency legal counsel and an agency HR official.

NOTE: In some circumstances, it may be difficult for a decision-maker to reach a determination because of contradictory information and a lack of documentary or eyewitness corroboration. In such cases, the decision-maker should perform a credibility assessment based on factors such as those set forth in Appendix A.

- 2. Corrective action, if warranted, should be designed to stop the harassment, put the affected person in the position he or she would have been in, to the extent possible, had the harassment not occurred, and ensure that the harassment does not recur. Corrective action need not be what the affected person requests or prefers, as long as it is effective. Corrective action should not adversely affect the affected person (e.g., if it is necessary to separate the parties, the affected person generally should not be moved without his or her consent).

Corrective action, under this order, may include, but is not limited to:

- a. Restoration of leave taken because of the harassment if it is determined that leave was taken as a direct result of harassment;
- b. Offer of reinstatement to a former employee when it is determined that he or she left EPA involuntarily primarily due to harassment;
- c. Expunging negative evaluation (s) in employee's personnel file that arose from the harassment if it is determined that the negative evaluation directly resulted from harassment;
- d. Training;
- e. Reassignment of the alleged harasser, and/or,
- f. Disciplinary action¹⁰.

NOTE: In the event the alleged harasser is not an EPA employee, coordinate corrective action with the appropriate employer; such action may include termination of the alleged harasser's access to EPA facilities and equipment.

¹⁰ Any disciplinary action will be taken in accordance with the applicable regulations, Agency orders, and collective bargaining agreements. The decision-maker should consult with an Agency HR official and Agency legal counsel on any disciplinary action to be taken.

3. If the decision-maker concludes that harassment has occurred, and takes corrective action, he or she shall notify the affected person that corrective action has been taken (without revealing either that any disciplinary action against the alleged harasser has occurred, or any other specific information that would violate the privacy rights of the alleged harasser), and encourage the affected person to immediately report any further harassment or retaliation.
4. If the decision-maker concludes that harassment has not occurred, the decision-maker will inform the affected person and alleged harasser that the harassment allegations were not supported by the information collected during the fact-finding.
5. Regardless of the conclusion, the decision-maker will inform the affected person and the alleged harasser of the prohibition against retaliation against anyone who reported allegations of harassment, and/or participated in the fact-finding.
6. The decision-maker shall make a record of conclusions reached and action(s) taken, if any. Records and evidence gathered during the fact-finding will be treated as confidential agency records and maintained in accordance with the applicable record retention laws, regulations and policies, including the Privacy Act.
7. The decision maker will provide the union with the same information (described in paragraphs 3 and 4 above) provided to affected persons and alleged harassers who are members of the bargaining unit.

VI. PROTECTION AGAINST RETALIATION.

Retaliation against any person who reports harassment, or who participates in a fact-finding, is prohibited and may result in disciplinary action, including dismissal.

VII. REVIEW DATE.

This order will be reviewed three (3) years from the date of approval to ensure that it is meeting its stated purpose. "Failure to conduct such review within the specified period will not void the requirements and procedures contained in the order."

VIII. TRAINING.

All managers and supervisors are required to complete training on these procedures. EPA will also ensure training is available for all employees.

IX. REFERENCES.

- A. Administrator's Anti-Harassment Policy Statement
- B. 29 C.F.R. Part 1614, Federal Sector Equal Employment Opportunity
- C. 5 C.F.R. Part 752, Adverse Actions
- D. EEOC's Enforcement Guidance: "Enforcement Guidance on Vicarious Employer Liability for Unlawful Harassment by Supervisors" (June 18, 1999), available at: <http://www.eeoc.gov/policy/docs/harassment.html>
- E. EPA Order 1000.31A4, Discrimination on the Basis of Sexual Orientation, Gender Identity, Status as a Parent, Marital Status, or Political Affiliation
- F. EPA Order 3110.6B, Adverse Actions
- G. EPA Order 3110.8A2, EPA Administrative Grievance System
- H. EPA Order 3120.1, Conduct and Discipline
- I. EPA Order 3120.2, Conduct and Discipline Senior Executive Service
- J. Applicable Collective Bargaining Agreements

APPENDIX 4



THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

MAR 31 2016

I am proud to affirm the U.S. Environmental Protection Agency's commitment to equal employment opportunity for all EPA employees and applicants for employment. Fostering a diverse and inclusive workplace through EEO is essential to fulfilling our mission to protect human health and the environment.

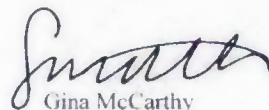
The EPA cannot and will not tolerate discrimination within the workplace based on race; color; sex, including pregnancy; gender stereotyping; gender identity or gender expression; national origin; religion; age; physical or mental disability; status as a parent; marital status; sexual orientation; transgender status; political affiliation; or protected genetic information. In addition, the EPA will not tolerate any type of harassment – either sexual or nonsexual – of any employee or applicant for employment. Employment decisions must be made in accordance with merit system principles contained in 5 U.S.C. § 2301.

EPA managers are expected to continue to provide first-class leadership in supporting the agency's EEO program by taking steps to promote EEO in all facets of employment, including recruitment, hiring, promotion, performance assessment, awards or career-development opportunities. I ask that all EPA employees, including managers and staff, take responsibility for reporting and addressing discriminatory conduct and preventing all types of discrimination, including workplace harassment.

The EPA promotes the use of alternative-dispute-resolution methods to resolve workplace disputes or EEO complaints. Managers are reminded that their participation in agency-approved alternative-dispute-resolution efforts to resolve EEO complaints is required, absent extraordinary circumstances as determined by the Office of Civil Rights' director or designee.

Any employee or applicant for employment who believes that he or she has been subjected to discrimination and elects to seek redress for discrimination must initiate the EEO complaint process within 45 days of the alleged discriminatory event by contacting the EPA's Office of Civil Rights Employment Complaints Resolution staff at (202) 564-7272 or an EEO officer at the regional or laboratory level. See also 29 CFR Part 1614, *Federal Sector Equal Employment Opportunity*, or EPA Order 1000.31A4, *Discrimination on the Basis of Sexual Orientation, Gender Identity, Status as a Parent, Marital Status, or Political Affiliation*, as applicable. In addition, an employee or applicant for employment who believes he or she was subjected to workplace harassment should also review EPA Order 4711, *Procedure for Addressing Allegations of Workplace Harassment*, for information on how to report allegations of workplace harassment.

Our success in advancing the EPA's mission hinges on a professional, productive, diverse and inclusive workplace. I appreciate your shared commitment to equal opportunity at the EPA and look forward to continuing our work together.


Gina McCarthy

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY CHARTER

ENVIRONMENTAL LABORATORY ADVISORY BOARD

1. Committee's Official Designation (Title):

Environmental Laboratory Advisory Board

2. Authority:

This charter renews the Environmental Laboratory Advisory Board (ELAB) in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2. ELAB is in the public interest and supports the Environmental Protection Agency (EPA) in performing its duties and responsibilities.

3. Objectives and Scope of Activities:

ELAB will provide advice, information, and recommendations to the Environmental Protection Agency (EPA) Administrator, the EPA Science Advisor, and/or Forum on Environmental Measurements (FEM) on issues related to enhancing EPA's measurement programs and the operation and expansion of a national environmental accreditation program.

4. Description of Duties:

The duties of ELAB are solely advisory in nature. ELAB will provide advice, information, and recommendations on the following:

- A. Enhancing EPA's measurement programs in areas such as:
 - a. Validating and disseminating methods for sample collection and for biological, chemical, radiological, and toxicological analysis;
 - b. Developing scientifically rigorous, statistically sound, and representative measurements;
 - c. Employing the performance paradigm in environmental monitoring and regulatory programs;
 - d. Improving communications and outreach between the EPA and its stakeholder communities; and
 - e. Employing a quality systems approach that ensures that the data gathered and used by the Agency are of known and documented quality.
- B. Facilitating the operation and expansion of a national environmental accreditation program. In this regard, ELAB will provide advice and recommendations to EPA on issues that impact the non-governmental community that are related to:
 - a. The operation and expansion of a national accreditation program characterized by an acceptance of the program by all states and suitable for accrediting environmental

- laboratories or entities of all sizes and types; and
- b. Steps that need to be taken in order to facilitate the further implementation of the performance paradigm in the nation's environmental monitoring and environmental accreditation programs.

5. Agency or Official to Whom the Committee Reports:

ELAB will provide advice, information, and recommendations and report to the EPA Administrator, the EPA Science Advisor, and/or FEM.

6. Support:

EPA will be responsible for financial and administrative support. Within EPA, this support will be provided by the Office of the Science Advisor.

7. Estimated Annual Operating Costs and Staff Years:

The estimated annual operating cost of ELAB is \$45,000, which includes 0.1 staff years of support.

8. Designated Federal Officer:

A full-time or permanent part-time employee of EPA will be appointed as the Designated Federal Official (DFO). The DFO or a designee will be present at all of the meetings of the advisory committee and subcommittees. Each meeting will be conducted in accordance with an agenda approved in advance by the DFO. The DFO is authorized to adjourn any meeting when he or she determines it is in the public interest to do so, and will chair meetings when directed to do so by the official to whom the committee reports.

9. Estimated Number and Frequency of Meetings:

ELAB is expected to meet approximately twelve (12) times a year, either by teleconference or in person, as needed and approved by the DFO. EPA may pay travel and per diem expenses, when determined necessary and appropriate.

As required by FACA, the ELAB will hold open meetings unless the EPA Administrator determines that a meeting or a portion of a meeting may be closed to the public in accordance with 5 U.S.C. 552b(c). Interested persons may attend meetings, appear before the committee as time permits, and file comments with the ELAB.

10. Duration:

Continuing.

11. Termination:

This charter will be in effect for two years from the date it is filed with Congress. After this

period, the charter may be renewed as authorized in accordance with Section 14 of FACA.

12. Membership and Designation:

ELAB will be composed of approximately fifteen (15) members who will generally serve as Representative members of non-federal interests. If needed, members may be appointed to serve as Regular Government Employees (RGEs) or Special Government Employees (SGEs). Representative members are selected to represent the points of view held by organizations, associations, or classes of individuals. In selecting members, EPA will consider candidates from trade associations for the environmental laboratory industry, trade associations from EPA's regulated community; environmental public interest groups; academia; federal; local and tribal governments; and accreditation bodies.

13. Subcommittees:

EPA, or the ELAB with EPA's approval, may form subcommittees or workgroups for any purpose consistent with this charter. Such subcommittees or workgroups may not work independently of the chartered committee and must report their recommendations and advice to the chartered ELAB for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered committee nor can they report directly to the EPA.

14. Recordkeeping:

The records of the committee, formally and informally established subcommittees, or other subgroups of the committee, will be handled in accordance with NARA General Records Schedule 6.2 and EPA Records Schedule 1024 or other approved agency records disposition schedule. Subject to the Freedom of Information Act, 5 U.S.C. 552, these records will be available for public inspection and copying, in accordance with the Federal Advisory Committee Act.

June 6, 2017

Agency Approval Date

June 13, 2017

GSA Consultation Date

July 10, 2017

Date Filed with Congress

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY CHARTER

HAZARDOUS WASTE ELECTRONIC MANIFEST SYSTEM ADVISORY BOARD

1. **Committee's Official Designation (Title):**

Hazardous Waste Electronic Manifest System Advisory Board (Board)

2. **Authority:**

The Hazardous Waste Electronic Manifest System Advisory Board was established pursuant to the Hazardous Waste Electronic Manifest Establishment Act, 42 USC § 6939g, and in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App.2.

3. **Objectives and Scope of Activities:**

The e-Manifest Board will provide recommendations on matters related to the operational activities, functions, policies, and regulations of the EPA under the e-Manifest Act.

The e-Manifest Board will focus on those operational issues that e-Manifest will address first. If broader issues are identified that have implications for E-Enterprise, recommendations on those issues will be referred to the Office of the Chief Financial Officer (OCFO) by the Office of Land and Emergency Management (OLEM).

4. **Description of Duties:**

The Board will provide advice and recommendations to the EPA Administrator on e-Manifest issues, including:

- The effectiveness of the e-Manifest IT system and associated user fees and processes;
- Matters and policies related to the e-Manifest program;
- General e-Manifest issues, including issues identified in EPA's E-Enterprise strategy that intersect with e-Manifest, such as:
 - Business to business communications
 - Performance standards for mobile devices
 - EPA's Cross Media Electronic Reporting Rule (CROMERR) compliant e-signatures;
- Regulations and guidance as required by the e-Manifest Act;
- Actions to encourage the use of the electronic (paperless) system; and
- Changes to the user fees as described in Section 3024(c)(3)(B)(i).

5. Agency or Official to Whom the Committee Reports:

The Board will report its advice and recommendations to the EPA Administrator through the Assistant Administrator for OLEM. Any recommendations related to E-Enterprise will be forwarded to OCFO by OLEM.

6. Support:

EPA will be responsible for financial and administrative support. Within EPA, this support will be provided by OLEM.

7. Estimated Annual Operating Costs and Staff Years:

The estimated annual operating cost of the Board is \$185,630, which includes approximately 1.9 staff years of support.

8. Designated Federal Officer:

A full-time or permanent part-time employee of EPA will be appointed as the Designated Federal Officer (DFO). The DFO or a designee will be present at all meetings of the advisory committee and subcommittees. Each meeting will be conducted in accordance with an agenda approved in advance by the DFO. The DFO is authorized to adjourn any meeting when he or she determines it is in the public interest to do so and will chair meetings when directed to do so by the official to whom the committee reports.

9. Estimated Number and Frequency of Meetings:

The e-Manifest Board will meet at least annually as required by the e-Manifest Act. Additional meetings by teleconference may occur approximately once every six (6) months or as needed and approved by the DFO.

As required by FACA, the Board will hold open meetings unless the EPA Administrator (or designee) determines that a meeting or a portion of a meeting may be closed to the public in accordance with 5 U.S.C. 552b(c). Interested persons may attend meetings, appear before the committee, and file comments with the Board.

10. Duration:

Continuing.

11. Termination:

This charter will be in effect for two years from the date it is filed with Congress. After this two-year period, the charter may be renewed in accordance with Section 14 of FACA.

12. Membership and Designation:

As required by the e-Manifest Act, the e-Manifest Board will be composed of nine (9) members. One (1) member will be the EPA Administrator (or a designee), who will serve as Chairperson of the Board. The rest of the committee will be composed of:

- At least two (2) members who have expertise in information technology;
- At least three (3) members who have experience in using or represent users of the manifest system to track the transportation of hazardous waste under the e-Manifest Act or an equivalent state program;
- At least three (3) members who will be state representatives responsible for processing e-Manifests.

13. Subcommittees:

EPA, or the e-Manifest Board with EPA's approval, may form subcommittees or working groups for any purpose consistent with this charter. Such subcommittees or working groups may not work independently of the chartered committee and must report their recommendations and advice to the chartered Board for full deliberation and discussion. Subcommittees or working groups have no authority to make decisions on behalf of the chartered Board and they cannot report directly to the Agency.

14. Recordkeeping:

The records of the committee, formally and informally established subcommittees, or other subgroups of the committee, will be handled in accordance with NARA General Records Schedule 6.2 and EPA Records Schedule 1024 or other approved agency records disposition schedule. Subject to the Freedom of Information Act, 5 U.S.C. § 552, these records will be available for public inspection and copying, in accordance with the Federal Advisory Committee Act.

June 30, 2017

Agency Approval Date

August 28, 2017

Date Filed with Congress



Committee on Transportation and Infrastructure
U.S. House of Representatives

Bill Shuster
Chairman

Washington, DC 20515

Peter A. DeFazio
Ranking Member

Christopher P. Bertram, Staff Director

Katherine W. Dedrick, Democratic Staff Director

March 3, 2015

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Ave., NW (1101A)
Washington, DC 20460

Dear Administrator McCarthy:

The House Committee on Transportation and Infrastructure and the Senate Committee on Environment and Public Works held a joint hearing entitled "Impacts of the Proposed Waters of the United States Rule on State and Local Governments" on February 4, 2015. We indicated in the hearing that we would submit questions for the record.

Attached are questions for the record from members of the House Committee on Transportation and Infrastructure. Please provide written responses within 30 days of the date of this letter. If you or your staff have any questions or need further information, please contact Geoff Bowman at geoff.bowman@mail.house.gov of the House Committee on Transportation and Infrastructure at (202) 225-4360.

Sincerely,

Bill Shuster
Chairman
Transportation and Infrastructure Committee

QUESTIONS FOR THE RECORD

HOUSE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE AND SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS HEARING ON

“Impacts of the Proposed Waters of the United States Rule on State and Local Governments”

February 4, 2015

QUESTIONS for The Honorable Gina McCarthy (Administrator U.S. Environmental Protection Agency)

A. Submitted on Behalf of the Committee:

Q1 - The proposed rule talks about regulating “waters.” How do you specifically define a “water”? Is any wet area on land a potential “water” under the proposed rule? If not, please describe in detail what is, and is not, a “water.”

Q2 - We understand that EPA and the Corps received over 1 million comments from the public on the proposed rule, but the docket for the rule only includes approximately 19,400 “substantive” comments.

A. Did the agencies receive any other substantive comments besides the approximately 19,400 comments in the docket?

B. Were the remaining 900,000-plus comments received considered “not” substantive? Were these nonsubstantive comments from mass mail-in campaigns? Please describe the nature of these other, nonsubstantive comments.

C. On February 26th 2015, Administrator McCarthy told the House Appropriations Committee that 87 percent of the comments received were positive responses. Is that 87 percent of the 1 million comments received? Were most of the 900,000-plus comments that made up Administrator McCarthy’s 87 percent statistic not separate or substantive comments, but were from mass mail-in campaigns?

D. Of the approximately 19,400 “substantive” comments received, how many were positive? How many were opposed? How many were neutral?

Q3 - EPA recently indicated that it is planning to finalize the rule during the Spring of 2015.

A. Are EPA and the Corps still planning to promulgate the rule in the Spring of 2015? If so, please explain specifically how the EPA and the Corps plan to review and take into

consideration each of the 1 million comments that were received, prepare responses to all of the comments, and revise the rule based on the multitude of comments received, all within a period of a few months?

B. Will the Agencies prepare a detailed response to the public comments? How will the EPA respond to each and every issue raised in each comment, or does the EPA plan to gloss over the issues in the response to public comments?

Q4 - In developing its proposed rule, the Agencies failed to conduct outreach to state and local governments. The lack of appropriate consultation was pointed out in comments filed by many state and local officials, plus organizations representing state and local governments. If EPA and the Corps worked with states to develop the proposed rule as they claim, why did the majority of states write comments opposing the rule as proposed and asking the Agencies to withdraw or substantially revise the rule?

Q5 - EPA has said it has done extensive outreach to stakeholders during the comment period, and has conducted some 400 stakeholder meetings around the country.

A. Please identify each of the stakeholder meetings that was held, including the date and location where each was held.

B. Provide a complete list of all Federal agency (EPA, Corps, and any other agencies) and Federal contractor participants at each stakeholder meeting.

C. Identify all of the stakeholders who participated in each stakeholder meeting.

D. Provide all handouts and other presentation materials from each stakeholder meeting.

E. Provide all transcripts, official notes, assessments, reports, papers, and other records of each of the stakeholder meeting proceedings and outcomes.

F. Identify the amount of staff time, travel costs, and other expenses incurred by the Agencies for each of the stakeholder meetings.

Q6 - The Small Business Administration's Office of Advocacy (SBA) recently concluded that EPA and the Corps have improperly certified the proposed rule under the Regulatory Flexibility Act because it would have direct, significant effects on small entities, and recommended that the Agencies withdraw the rule and that the EPA conduct a Small Business Advocacy Review panel before proceeding any further with this rulemaking. Furthermore, The Small Business Administration along with many governmental and private stakeholders, concluded that EPA and the Corps conducted a flawed economic analysis of the proposed rule. The analysis ignored the impact of the rule on CWA's regulatory programs and did not adequately evaluate impacts of the proposed rule.

A. What is EPA's response to the SBA Office of Advocacy's comments on the proposed rule?

B. Why wasn't a Small Business Advocacy Review panel held? Will you commit to re-examining the impacts of the proposed rule on small entities and conducting a Small Business Advocacy Review panel before proceeding any further with this rulemaking?

C. Will you commit to conducting a new economic impacts analysis of the proposed rule, taking into account and specifically addressing the concerns stated by SBA and the stakeholders, before proceeding any further with this rulemaking?

Q7 - EPA and the Corps state that this rule is not an expansion of jurisdiction, that it is only a clarification. What exactly will the rule clarify? Specifically what waters are in and what waters are outside of Federal jurisdiction under this rule? Will the Agencies add clarity and specificity to the final rule text, or will the Agencies keep the final rule text general and add discussion to the preamble of the final rule or to supplemental "guidance"?

Q8 - The Agencies have been trying to create the impression that ditches are not regulated.

A. Describe specifically in which circumstances what ditches are considered jurisdictional under the rule and what ditches are not jurisdictional.

B. Describe specifically in which circumstances what ditches are considered a tributary under the rule and what ditches are not a tributary.

C. If a ditch is determined to be jurisdictional, will the ditch be subject to water quality standards? Total Maximum Daily Loads (TMDLs)?

Q9 - In determining whether a ditch is jurisdictional, how will connection be determined? Will it be through the physical ditch structure which directly (or indirectly) connects to a "water of the U.S."?

A. Is there a limit to connectivity? Can a ditch that is physically connected to another ditch (for example, via a pipe, other infrastructure, or convergence) that ultimately leads to a "water of the U.S." be considered jurisdictional even if it is hundreds of miles away and doesn't have a relatively permanent flow of water?

Q10 - This proposal references "ephemerals." What is the definition of an "ephemeral" feature? Can a feature be "ephemeral" and not be a stream or a tributary and not be jurisdictional? Please explain.

Q11 - How will intermittent, ephemeral, and seasonal tributaries be regulated under the proposed rule?

Q12 - The proposed rule includes an exclusion for ditches that are excavated in uplands and drain only uplands if they do not have water year round. But the rule does not define the term "uplands." How will uplands be defined? Does it mean any land that is not a wetland?

Q13 - EPA states that the exemption for maintenance of drainage ditches will continue, as this exemption is automatic, and that state and local agencies responsible for maintaining ditches do

not have to apply for this exclusion. However, even under current rules, it is unclear whether and to what extent the maintenance exemption is allowed for ditches. For example, in some districts, agencies must apply for the exemption while others state the conditions for maintenance activities are too narrow to qualify. Other agencies have been told to discontinue their maintenance activities they believed were previously exempt. Agencies have been told they need to provide the original documents that show the scope, measurements, etc., of these ditches but since many of them may have been dug decades ago, the documentation does not exist.

A. Please explain specifically how the ditch maintenance exemption will be implemented under the new rule. Will the rule specifically state that all ditch maintenance activities are exempt and do not need prior approval?

B. If a state or local agency is conducting routine maintenance activities on a ditch that is near or adjacent to wetland areas, would that make the ditch jurisdictional?

Q14 - Will municipal storm sewer systems, water recycling and reuse, stormwater treatment, and other water treatment related facilities be exempt from jurisdiction under the Clean Water Act under the proposed rule? Or will water recycling supply ponds, constructed wetlands, and other treatment components of this infrastructure jurisdictional and subject to Clean Water Act regulation?

Q15 - The EPA has said that municipal separate storm sewer systems (MS4s) will not be regulated as “waters of the U.S.” However, EPA also has indicated that there could be a “water of the U.S.” within an MS4 system.

A. Please explain what stormwater management facilities are specifically exempt under the proposed rule? What types of facilities are or could be considered jurisdictional waters? Please provide several examples where a “water of the U.S.” might be found within an MS4?

B. Please explain in detail where an MS4 ends and a “water of the U.S.” begins? Can a feature be both an MS4 and a water of the U.S.?

C. If an MS4 is determined to be a “water of the U.S.,” how will that impact the ability to utilize that facility for water quality (e.g., stormwater) treatment? Will water quality standards be applied to such facilities?

Q16 - What specifically is considered a floodplain and a riparian area under the rule?

B. Submitted on Behalf of Congressman Hanna:

Q1 - What support will EPA give in the permitting and implementation process to state environmental agencies currently responsible for enforcing water regulations?

Q2 - How has EPA ensured that states will interpret and implement ambiguously defined provisions in the same way?

Q3 - A farmer purchased property 25 years ago that was in pasture land when he purchased it. The pasture routinely has wet spots during extremely wet years, and water typically dots the landscape and meanders across the floodplain into a drainage way which experiences seasonal flows occasionally. Drainage flows to a classified water body subject to federal jurisdiction. The farmer maintains a variety of fences for his cattle, including cattle crossings, and periodically fertilizes the entire pasture system. Cultivation of this area occurs under a five year rotation. The farm is conscious of the navigable waters that lie in close proximity to his farm.

Under the proposed WOTUS rule:

- A. At what point in the floodplain does “upland” drainage become a jurisdictional water of the U.S.?
- B. Does fertilizing these pastures count as applying nutrients to a jurisdictional water of the U.S.?
- C. Does installing fencing or shaping and grading wet areas through cultivation now count as activities regulated through Section 404 dredge and fill permitting?
- D. Who will make such jurisdictional calls?
- E. Given the close nature of Federal conservation standards and exemptions proposed from CWA, where do non-participating farmers stand?
- F. The EPA maintains that the list of exempted practices favors agriculture. If this is the case, why didn't EPA choose to pursue the relatively few practices that would require a permit?

C. Submitted on Behalf of Congressman Graves (MO):

Q1 - The Environmental Protection Agency (EPA), Army Corps of Engineers, and the regulated utility industry rely on nationwide and regional general permits, under Clean Water Act sections 402 and 404, to authorize certain projects in jurisdictional waters without the need for individual permits. These general permits have been an especially important tool for energy infrastructure projects, including transmission lines, as well as large solar and wind projects.

Currently, in order to rely on nationwide permits, utilities are subject to a small acreage limitation of jurisdictional waters that will be affected by “single and complete” projects. In other words, a relevant nationwide permit is limited to a small, individual section of a project that may affect jurisdictional waters. General permits ensure that the project is not significantly harming navigable waters. However, under the proposed ‘waters of the United States’ rule, most if not all ditches, dry washes, and other such minor features that a project crosses would be

considered a jurisdictional water. It appears the 'waters of the United States' rule will make it more difficult to use nationwide permits by making it harder to qualify for them.

I have heard that the EPA doesn't see it this way. Please explain how linear facilities will continue to be able to use nationwide permits for crossings when more geographic features will be considered as jurisdictional under the rule. Also, please explain how ditches designed to facilitate transmission line construction (or renewable project construction) would not come under the current definitions, and how utilities would continue to be able to rely on nationwide and regional general permits as the utilities currently do, especially since these permits are administered by local Corps employees who have to interpret the rules.

D. Submitted on Behalf of Congressman Katko:

Q1 - Please provide illustrative examples of what does and what does not constitute:

- A. A tributary.
- B. An upland.
- C. Adjacent waters.
- D. Shallow subsurface hydrologic connections as "neighboring" waters.
- E. A floodplain.
- F. A significant nexus.

Q2 - What type of technical and financial assistance will you be providing farmers and state enforcement agencies to ensure seamless implementation of this rule? Additionally, what will the cost of compliance be for New York farmers?

Q3 - In comments submitted to EPA by the New York Farm Bureau regarding this proposed rule, they note "The rule defines a tributary as having the 'presence of a bed and banks and ordinary high water mark...which contributes flow, either directly or through another water' to a traditional navigable water (79 Fed. Reg. 22263). Despite this definition, however, the agencies will not necessarily require that these features exist for a tributary designation, since on low gradients 'the banks of a tributary may be very low or may even disappear at times' and the Ordinary High Water Mark need only be indicated by changes in soil characteristics or the presence of litter or debris (79 Fed. Reg. 22202)." Does this type of definition equate to the need of a judgment call by the Federal government? Even if the physical features of a tributary disappear, could the EPA have the authority to issue a judgment call that the features of a tributary need not be present to declare certain lands to be jurisdictional waters?

Q4 - In its comments, the New York Farm Bureau also shares the concern that "Farmers wishing to ensure compliance with the Clean Water Act will be forced to seek individual determinations

for a host of low spots, ditches, seasonal drainages, and isolated wetlands,” but that no additional staff or resources are planned for the agencies with a shared responsibility to make these determinations, and there is already a significant delay in normal conservation determinations in parts of New York State. How long should a farmer expect to wait for an individual determination on planned farm activities? Can the EPA provide a time limit under which determinations will be made?

E. Submitted on Behalf of Congresswoman Comstock:

Q1 - Under the recent proposed rule, landowners with properties containing newly jurisdictional waters will experience a decrease in property value. Has EPA considered how the rule will affect property values?

Q2 - How will the proposed regulation affect other Clean Water Act programs besides Section 404? Will EPA revise its economic analysis to include the impacts on other Clean Water Act programs such as Section 402 (NPDES, stormwater)?